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# AMERICAN AND ENGLISH PROCEDURES FOR THE DETERMINATION AND EXPRESSION OF SOVEREIGN WILL

by

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# PREFACE

This thesis is a farther development of an inquiry and round table discussion directed by Doctor Frederick A. Cleveland from the chair of United States Citizenship on the Maxwell Foundation in his seminar entitled "The Nation." One of the outstanding topics brought under consideration by him was the need of a procedure for defining and expressing as well as for executing sovereign will in a nation which has adopted a democratic form of government--the need to develop a procedure for making its governing agents responsive and responsible.

Obviously this is a subject of research that could not be exhausted within the time available to a candidate for the degree of Master of Arts. In fact it is a subject to which a life time of study might be devoted. Yet, the significance of the method pursued stands out clearly in this preliminary study of procedures developed to govern the policy determining bodies and appeals to the electorates in Great Britain and the United States of America. The comparative results obtained challenge the attention of thoughtful citizens.

The author wishes to express his gratitude to Doctor F.A.Cleveland for his inspiration and continued guidance

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## INTRODUCTION

During the past decade democracy, democratic governments and democratic institutions have been subjected to much disparaging criticism. Democratic government has been indicted as being a fumbling, slow-moving, compromising and inefficient government. Consequently, the protagonists of those political theories and institutions which are opposed to and conflicting with democratic political theories and institutions have gone to great lengths when urging that the latter be relegated to a position of relative disfavor in the minds of those whose private opinion they assume constitutes the Public Opinion of the civilized countries of the world.

It is indeed platitudinous to assert that human fallibility has placed the stamp of imperfection upon all human creations--and that democracy and democratic institutions, along with all other political institutions, have not escaped this imprint. To allege, therefore, that democratic institutions are perfect would certainly be a foolish statement; on the other hand, however, to content ourselves with the proposition that perfection is beyond attainment, and that to strive for it is a gesture which must inevitably meet with failure, is to doom ourselves and our institutions

to decay. It is incumbent upon us, therefore, neither to resign ourselves to the fates nor to dedicate ourselves to the preservation of the status quo, but rather to bend our efforts and direct our energies to the improvement of our democratic institutions. But before considering such institutions or discussing the problems of democratic governments, it will be well to arrive at an understanding of what is meant by the term democracy.

In the eighteenth century, Montesquieu used the following words to describe democracy: "When the body of people in a republic are possessed of the supreme power, this is called a democracy .....In a democracy the people are in some respects the sovereign, and in others the subject. There can be no exercise of sovereignty but by their suffrages which are their own will..... The people in whom the supreme power resides ought to do of themselves whatever conveniently they can; and what they themselves cannot rightly perform, they must do by their ministers...."[1] In other words, by democracy is meant a politically organized society in which sovereignty rests in that whole body of people who constitute the nation, the members of which undertake, one with another, to accept, for the purposes of control, the deliberate judgment of the majority. "Institutionally, democracy means that the public agencies of the politically organized society shall be controlled by

1. The Spirit of the Laws, Vol. I Book II Chapter II

the will of a majority of its members and conducted for their benefit..... In the exercise of popular control over the government democracy means the decision of every question of public policy in accordance with the dictates of social conscience; it means that there must be a meeting of the minds of not less than a majority of the whole society as determined by a plebiscite or representative body, or both, instead of the society being subject to the dictates of a personal sovereign or the consensus of the minds of a minority as a dominant privileged class. It means rule by the consensus of public opinion, including all classes, arrived at after due deliberation; i.e., after each question at issue has been clearly stated, the facts supporting the claims and contentions of all parties are made known, and the arguments of the recognized leaders of all parties have been heard."[2]

To operate successfully, democracy must needs give to its people a full knowledge of the facts and conditions, and the benefit of a full discussion and interpretation thereof, before a consensus of opinion is taken. It is therefore, perhaps, unfortunate that only in very small political societies can all the members, or all the voting members, get together personally to participate in deliberations which may result in the expression of an intelligent

2. The Budget and Responsible Government, Cleveland and Buck, p.6.

group opinion. In our present complex civilization, political societies have outgrown the possibility of personal participation by the whole electorate; a representative body exists to assist the electorate and to act for them on matters delegated to it. "Thus the representation principle does not change the functions of the electorate; it only changes the method of procedure whereby the electorate may be informed. The whole voting membership still retains the power of ultimate or supreme control."[3] Thus we are confronted with a major problem presented by present-day democratic institutions, to wit: In a huge democracy like ours where all the people cannot meet face to face, (1) how are the people to be made aware of problems, and (2) how are they to be made aware of the pertinent facts so that they can exercise an intelligent choice? The solution to this problem necessarily involves a consideration of procedure.

The assumption, on the basis of which this inquiry was made, was that democracy has succeeded in so far as it has amply provided for developing and expressing an informed public opinion; democracy has failed in so far as it has not adequately provided for clear definition of specific problems to be solved or issues to be decided on the basis of conclusions of fact instead of appeals to prejudice and the personal interests of the judges. The point of view from which

3. The Budget and Responsible Government, Cleveland and Buck, p. 20.

inquiry and discussion of the successes and failures of democracy to retain the respect and good will of modern nations can with greatest advantage be observed, is one that assumes for the governance of its political courts (its representative policy-determining bodies) the same need for a procedure adapted to the dramatization of problems and issues of social and political justice as obtains in administrative and judicial courts.

To the end that concreteness might be given to the inquiry into the procedures of democracy's courts for the trial of issues raised involving principles of social and political justice and consideration of needs for institutional adjustment, the institutional requirements evolved in response to the pressures brought to obtain equal justice for all in judicial courts can be reduced to a formula with nine successive steps.

1. A declaration, petition, complaint, information or indictment which calls attention to an alleged breach or threatened impairment of a substantive right or to a failure to discharge a substantive duty by a designated party or parties with an appeal for remedial action to a duly constituted authority.

2. Official notification to the party or parties so designated to appear and answer.

3. Appearance of the party or parties in court and a definition of the problem by a joinder of issues.

4. Preparation for a hearing in open forum to adduce testimony.

5. An inquisitorial procedure in which the designated authority seeks to prevent the introducing or insure the eliminating of any and all testimony which is irrelevant to the issues and incompetent as proof of the allegations stated in his pleading by the moving party.

6. The weighing of the evidence for the purpose of reaching a conclusion as to the proof or lack of proof of the allegations.

7. A decision, as to what if any remedy shall be afforded, is reached on the basis of existing law as applied to the state of facts discovered to exist.

8. The right of appeal to one or more higher tribunals to review the decision.

9. The issuance of the judicial order to the executive to enforce the final decision or judgment.

The foregoing formula not only meets the requirements of scientific inquiry but also provides the means of dramatizing every issue of sufficient importance to arouse public interest when the whole inquest is conducted in open forum. Accepting the foregoing formula as scientifically sound and adaptable, the following categories may be set up as guides for the collection of data descriptive of procedures of political courts instituted by modern democratic nations.

1. Provisions made to enable interested individuals and

groups to bring to the attention of appropriate authorities questions of social justice and public policy.

2. Provisions made for defining the issues with respect to which evidence is to be taken.

3. Provisions made to ensure the appearance of all parties who could give relevant and material testimony.

4. A fact-finding and reporting procedure wherein all relevant testimony and evidence competent as proof of facts pertinent to the question are gathered, and in which a conclusion as to the facts is reached.

5. A deliberative procedure in which the entire court of first instance (the representative body) determines what, if any, decision or enactment shall be made on the basis of social justice and public policy as applied to the state of facts discovered to exist.

6. A procedure for review and revision.

7. The right of appeal to the electorate for final approval or disapproval.

8. The execution of the final decision.

1) Why legislative procedures. Of the several organs through which group-will is expressed and carried out, the legislative organ occupies a paramount place because "the will of the lawmaking power must from the very necessity of the case be superior, to a certain extent, to those of the executive and judicial organs, first because that will must be expressed before it can be interpreted and enforced and, second, because it belongs to the legislature to provide the

subordinate agencies through which the law is interpreted, applied and executed."[4]

American and English legislative procedures have been chosen because the United States and England are the two great and leading exponents of political democracy against which countries, perhaps, the greatest barrage of criticism has been showered. It is my intention to present a factual statement first of the American procedure and then of the English procedure so that the reader may form his own opinion, by virtue of the elucidated contrasts, of the merits and defects of the respective institutions which exist to give effect to the will of the people in these two most outstanding political democracies, to the end that the merits of each may eventually supplant the defects of the other.

2) Nature and Function of the "legislative organ."

Before continuing our consideration of procedures in these legislatures, shall we pause a moment to reflect on the general nature and function of a legislative body? Professor Garner describes the American Congress as an organ "analogous to the board of directors of a corporation in that it determines how the government, and particularly the administrative branch, shall be organized, what services it shall undertake, how they shall be performed, and the amount of money which

4. Political Science and Government, James W. Garner, p.593.

shall be expended for their maintenance."[5] The legislature is an organ for the expression of public opinion, the members of which have, or are supposed to have, mandates from their constituents in regard to the important political issues of the day.

It is a quite generally accepted principle that representation in lower chambers should be based upon total population rather than upon the number of voters. There are important deviations from this rule;[6] so important, in fact, do some consider these exceptions to the underlying principle that constituencies of substantially equal population shall be equally represented that Mill lamentated that existing democracies were not "governments of the whole people, by the whole people, equally represented, but governments of the whole people, by a mere majority of the people, exclusively represented." This observation, critical in tone, has been made by many well-informed observers. It seems to challenge the soundness both of majority rule and proportionate representation. Nevertheless, it remains a fact that both principles are firmly adhered to as fundamental. Both principles are written into the constitutions of modern democracy and numerous procedural devices have been employed to make them effective. Since the real import of the comments of the several authors in their criticism of majority

5. Political Science and Government-James W. Garner, p.595.
6. idem, pp. 626-627.

rule is to make the democratic principles (of equality, of trusteeship, of making the individual members of the nation subservient to rules governing them all, etc.) ineffective, their observations are not pertinent to the subject of procedures devised to define and express the will of the "popular" sovereign, and may be dismissed without further consideration.

## AMERICAN PROCEDURE FOR THE DEFINITION AND EXPRESSION OF SOVEREIGN WILL

### A. The Role of Public Opinion

Public opinion is a motive force in democracy. To be a proper motive force, it must be really public and popular government is based on the assumption of a public opinion of that kind. "In order that it may be public a majority is not enough, and unanimity is not required, but the opinion must be such that while the minority may not share it, they feel bound, by conviction, not be fear, to accept it; and if democracy is complete the submission of the minority must be given ungrudgingly."[7] Further, public opinion should be opinion, not prejudice.[8]

What is public opinion? In what setting does it function? Walter Lippmann, in his book "Public Opinion" aptly defined it when he said, "Those features of the world outside which have to do with the behavior of other human beings, in so far as that behavior crosses ours, is dependent upon us, or is interesting to us, we call roughly public affairs. The pictures inside the heads of these human beings, the pictures of themselves, of others, of their needs, purposes, and relationship, are their public opinions. Those pictures which are acted upon by groups of people, or by individuals

7. Public Opinion and Popular Government, A.L.Lowell, p.15.
8. ibid, pp. 16, 18, 21, 22, 24.

acting in the name of groups, are Public Opinion with capital letters."[9] Thus, the analyst of public opinion must recognize a triangular relationship between the scene of action, the human picture of that scene, and the human response to that picture working itself out upon the scene of action. He must recognize that conflicting individuals and groups live in the same world, an environment of reality, but that they think and feel in different worlds, environments of pseudo-reality, and that it is because their stimuli or motivations are derived from these pseudo-environments that conflicts result when seeking adjustments with reality. It is a problem of democracy, therefore, to provide such institutions, to create such processes, that the pictures formed in the minds of the individuals shall be as nearly alike as possible. It is democracy's task, in other words, if it wishes to function smoothly, if it wishes to be justified, to provide procedures adequate for the formation of a real and intelligent public opinion. It is a fundamental assumption of democracy that "the will of the people shall be the law of the land.....public opinion rules the country. Our political parties, city councils, state legislatures, and Congress exist for the sole purpose of enacting into law the decisions of public opinion."[10]

9. Public Opinion, Walter Lippmann--p.29.
10. Our Governmental Machine, Schuyler C. Wallace, pp.3-20.

The importance of public opinion thus manifests itself. In a sense it may be considered the informal counterpart of the more formal concept of sovereign will. Thus it becomes self-evident that there can be no true sovereign will until there exists a real Public Opinion which can be determined and defined. We thus come squarely face to face with the problems as to what procedures have been instituted to create an informed Public Opinion and what processes have been institutionalized to ascertain and express the sovereign will. The logical conclusion is that in democratic government Public Opinion and Sovereign Will are inextricable.

1) Popular Control through the Electorate. The American government is a government of the people, in the sense that the people are sovereign and have it in their power, both legally and actually, to make the government what they want it to be and cause it, at least eventually, to do what they want it to do.[11] "Where a representative body is interposed for purposes of inquest and discussion, it serves as a court of first instance, the electorate being a court of last resort. Whether the practice coincides with the theory depends on the procedure developed

11. Introduction to American Government, Ogg and Ray, p. 181.

and used (1) in the conduct of the deliberations of the representative body; (2) provision made for giving publicity to its inquiries and discussions; (3) the opportunity given to the leaders for appeal to the electorate; and (4) the methods employed for the conduct of the appeal to the people."[12] These procedures are essential because they are the processes by which "the motor centers of the body politic" are brought under the domination of the will of the people. They are the only processes by which popular sovereignty can be made real.

By the term"electorate" we mean, of course, those persons who are entitled to vote. But how is the electorate distinguished from the rest of "the people?" Before stating some of the more frequent tests prescribed as requisite to be qualified as an elector, it should be noted that there is no single body of rules or laws which is universal throughout the United States and by virtue of the compliance with which one is thereby considered as a qualified elector, even to vote for officers in the federal government. To become a member of the electoral body qualified to elect federal officers, one must comply with the laws of the state in which he seeks to exercise his suffrage; in other words, it is only because one complies with a state's requirements that he is permitted to

12. The Budget and Responsible Government, p. 21.

exercise his suffrage in federal matters. The only provisions made by the federal government are inhibitory regulations against the several states forbidding the denial of the right to vote because of race, color or sex.

As has already been stated, each state has its own laws which qualify persons to become members of its electorate. Although the laws are not entirely uniform, most states have adopted the same general principles, e.g., an elector must be a United States citizen; must be domiciled within the state--from six months to a year prior to the primary elections (this requirement varies from state to state); must be at least 21 years of age; some states impose literacy tests; a few still keep the property qualification; personal registration laws are universally invoked.

When an individual has complied with the state's requirements, he becomes a qualified elector and may vote. The electorate is that organ of society which gives voice to the will of the people--the sovereign will. It is a medium through which Public Opinion is expressed. Thus, the people of the several states, by means of regulation of suffrage qualifications within such states, control the body of the electorate and, because of such control, possess a means to express their will--the sovereign will.

"Voting is not merely a right. In a much truer sense..... it is a duty. Nor is it a duty easy to perform properly." [13] Voting, with all the details thereby involved, is a bare minimum of what a democracy must ask of many of those upon whom it has conferred the franchise.....it must secure from them a variety of additional services based upon political consciousness.[14]

Popular Control through the Party System. "Behind the ballot box stand the political parties, channels for the translation of public opinion into governmental action. That, at least, is their avowed object. Only through the presentation to the voters of a choice of issues can this be accomplished."[15] The political parties do not stand aloof from the general public. On the contrary, the political parties are composed of the people of the United States in their capacity as voters organized in more or less permanent associations to the end that they may be more effective in

13. Political Parties and Electoral Problems, Brooks, p.575.
14. The late President Hadley of Yale suggested four different ways in which a voter might behave, e.g., (1) go into politics as the business of life (2) influence public affairs indirectly by activity in behalf of measures calculated to promote better government (3) reserve political activity for special emergencies (4) exert general influence on the conduct of public affairs by forming independently his moral judgment and expressing it fearlessly. cf-Standards of Public Morality, A.T. Hadley, (The Macmillan Company, 1907)
15. Our Governmental Machine, Wallace, pp.30-40.

their action. These are the associations which nominate candidates and "through which the ordinary citizen can exert a direct influence in the formulation of public policy and the execution of that policy when enacted into law....."[16]

The role which parties may play in clarifying and simplifying current issues has been exalted by such authorities as Woodrow Wilson and A. L. Lowell. In "Congressional Government,"[17] Wilson stresses the need for a party to act as a "distinct organization.....under easily recognized leaders." President Emeritus Lowell indicates that, since any number of points of view may arise with reference to a given issue, it is the function of each party to make a definite alignment, presenting two more or less antagonistic solutions of a problem. "It is necessary to formulate a 'yes' or 'no' alternative for the voters."[18] However, in many districts, the judgment of the voters is so clouded by hereditary prejudice, by race antagonism, by rivalry between country and city or by the personalities of local leaders that there is no free choice between parties. In some districts party loyalty has become a habit. Voters may, it is true, persistently support one of the parties because they approve its basic principles; but most unchanging districts have come to follow a voting label for traditional reasons, irrespective of merits or demerits of the party in a given campaign.

16. Introduction to American Government, Ogg and Ray, p.200.
17. 2nd edition, Houghton Mifflin Co., Boston, 1885.
18. Party Government in the House of Representatives, Hasbrouck, p.168.

Insofar as such conditions exist, they impair the theory that strict party government is the most responsive to the popular will.[19] Frank Kent, in his "The Great Game of Politics," has suggested that in these unchanging "solid districts" the true expression of popular will may never occur because the decision of the dominant party is made during the contest between party candidates in the party primaries. The majority there prevailing is not always a majority of the electorate participating in the regular elections. The constitutional method of electing Senators by "classes," i.e., a third every two years,[20] prevents a party majority of that body from being returned at any one time. As a matter of fact, the six year term was intended to remove the individual Senator from too frequent or too close contact with public opinion. On the other hand, the entire House is renewed biennially. Its members are all, in theory at least, elected upon the issues of the same campaign. A political majority in the House is usually an approximate, but by no means an unimpeachable, measure of the nation's approval.

Party platforms, amongst other things, contain the philosophy, aims and promises of the party, should it receive the endorsement of the people. Party candidates are expected to adhere to the platform. Under the direct system of nominating candidates, "platforms have become more

19. ibid, pp. 166-187
20. U.S.Constitution, Art. I, Sec. 3.

binding by making them personal rather than party pledges ...."[21] This fact has been recognized by the parties, and no party candidate is expected to adhere to any portion of the party's platform if this would be in violation of the platform on which he personally was elected. It is a recognition of the principle of responsibility of officers to citizens.

The criticism aimed at the concentration of all power in the House in the rulers of the majority party is well-explained and answered as follows: "By reducing the open business to a form, by making all legislation pass through committees..... the minority party and (equally important) the dissidents among the majority are rendered helpless. All real business is done in committees. There the minority members can do what they will. Since they are always in a minority, it is, in all but the rarest cases, impossible to get a bill out of committee without the consent of the leader of the majority party. This system is inevitable if the House is to be an efficient agent of a party program...." [22] The party program is justified if it represents the sovereign will.

Popular Control through the Representatives. "It is beyond question that Parliament began as a matter of agency and not of representation. Its members gathered as agents to declare the will of their principals, not to consult about the good of the whole. At what time they became representatives rather than agents, deputies, delegates, nobody can say

21. Organized Democracy, F.A.Cleveland, page 376.
22. Government of the People, D.W. Brogan, p. 148.

with precision."[23] It is a fact, however, that today there is no unanimity of opinion as to the function of a representative. The universal use of this term cannot be taken to imply a common agreement as to the role of the representative. The views expressed and the actual practice of the several groups acting in the matter may be classified under three general heads.

(1) The representative is regarded as the delegate or agent of the constituency which elects him. It is his special duty to procure legislation for the advancement of the local interests of his constituency. This view was forcibly expressed by Henry J. Ford when he wrote, "The proper business of representative institutions is to provide 'a place where every interest and shade of opinion in the country can have its cause even passionately pleaded in the face of the government, and of all other interests and opinions.' "[24]

(2) He may be regarded as the representative of the whole state elected "to consult with other representatives and charged primarily with the care and advancement of the general interests....."[25] Edmund Burke, advocating this principle of representation, argued that "a representative is choser by the people to think and act for them and that, once chosen, he is a free and independent agent."[26]

23. Legislative Principles, Robert Luce, p.434
24. Representative Government, p.176. On p.177 Ford asserts that "the elective process can do no more than designate persons for the representative office."
25. Political Science and Government, Garner, pp.665-666.
26. Documents & Readings in Am.Govt., Mathews & Berdahl, p.323.

(3) A representative may be viewed as "chosen merely as a convenient mouthpiece of the people, and that he is therefore subject to their will, so far as that can be determined;"[27] or, as Garner put it, "he may be regarded as the mouthpiece or spokesman of the political party which is in the majority in the constituency from which he is elected and, as such, bound by the will of his party, whatever may be his own personal views in regard to the expediency or wisdom of particular legislative policies. When that will has been clearly made known to him by resolutions or instructions, he is morally obliged to conform to it by his acts and votes."[28]

This latter view has probably had the widest acceptance in the United States where "it was not unusual for a state legislature, before the change to popular election, to instruct the Senators (and occasionally even the Representatives) from that state how to vote on particular measures. Such instructions may also be given expressly or impliedly in party platforms and otherwise, although in every case the difficulty of assuring respect for such instructions is obvious."[29] Almost half the States include the right of instruction in their declarations of the fundamental rights

27. Cf. Note 26.
28. cf. Note 25
29. cf. Note 26

of citizens of a republic.[30] It may be significant, too, that the view that no instructions should be given has not been specifically laid down in any of the American constitutions.[31] The arguments and assurance given to the wavering delegates by Rufus King, when the Massachusetts Convention met for the purpose of ratifying the Federal Constitution, is of great significance. Explaining and defending it, he declared: "The State Legislatures, if they find their delegates erring, can and will instruct them. Will this be a check? When they hear the voice of the people solemnly dictating to them their duty, they will be bold men indeed to act contrary to it. These will not be instructions sent them in a private letter, which can be put in their pockets: they will be public instructions, which all the country will see; and they will be hardy men indeed to violate them."[32] The Federal Constitution, in Massachusetts, was ratified by a very close vote, "and had the vote gone against ratification it is doubtful if any such Union as we now have would have been formed. It might, therefore, be alleged with some ground that one of the promises which made the Union possible was the promise of Rufus King that the delegates of a state

30. Legislative Principles, Luce, p.455. "It is fair to attach almost as much significance to omission as to insertion, and to conclude that a majority of the States may not believe in the principle."
31. cf. Note 25.
32. Debates of Massachusetts Convention of 1788, p.146.

in the national Congress might be instructed."[33] Thus the view that the representative's function is not to interpret the common good as his conscience, his study and his better judgment dictate "but to ascertain to the best of his ability what public opinion demands and give effect to it, whether his conscience and judgment approve it or not,"[34] is founded on good evidence. Accordingly, "provision must be made by the representative body for giving publicity to its inquests and deliberations, for this is the only way that a large and widely scattered electorate may become informed..... The proceedings of the representative body, therefore, must be so staged and so conducted as to make news. This means that the proceedings of inquest and deliberation of the representation must be conducted as a public forum in order that the whole people may "liston in." This means that every issue must be dramatized."[35]

A final word about the electorate and the representatives. Pledges are often elicited from the latter. A

33. Legislative Principles, Luce, p. 460.
34. Political Science and Govt., Garner, p. 675. cf. also Constitutional Conventions, R.S.Hoar, p.186. "The position of a delegate (in a constitutional convention is) a position of public trust, and even a public office; but not, if we regard such conventions as extraconstitutional, a position under the constitution."
35. Budget and Responsible Government, pp. 22-23

pledge may be purely voluntary, i.e., an independent declaration of purpose, or it may be given in response to demand, i.e., quid pro quo. In either event, pledges are akin to instructions. "They differ, of course, in that a pledge is a promise and an instruction is a command, so that normally they proceed from opposite parties--the elector instructs, the elected pledges."[36] When a pledge is made, all agree that the elected representative is bound to carry out to the best of his ability the terms of such pledge. But should the fundamental circumstances change, is he released from his pledge without an expression of will from his constituency? This dilemma faces every representative of the people for he has no way of really ascertaining true public opinion until the electorate speaks once again--and that time, generally, does not come until after his opportunity for expressing the sovereign will of his constituency has passed.

Censure is a method of punishing representatives whose constituents view the relationship as one of master and servant. At the behest of a designated number of the electorate in a constituency, the legislature may pass a resolution of censure: the legislature may subsequently rescind

36. Legislative Principles, p. 483.

such resolution. "Fortunately it is rarely bestowed by formal action, for it is the most ineffective and useless form of influence that can be exerted. The mischief, if mischief it be, has been done and rarely can be undone. Censure humiliates, embitters. Far better it is to punish by the accustomed method of defeat for reelection."[37]

2) Control by Electorate. "The right of petition goes back beyond history. Subjects have petitioned rulers ever since there were subjects and rulers....."[38] From the beginning of representative government, citizens have exercised the right of petitioning their legislature for the redress of grievances. This right is recognized and well established. The very first article of the Bill of Rights in the United States Constitution provides that Congress shall make no law abridging the right of the people "to petition the government for a redress of grievances." A fortiori is such right possessed by the electorate. "This right is closely associated with a number of other rights, such as freedom of assembly, free speech and free press...."[39] Today private bills constitute a great part of the work of both English and American legislatures.[40]

37. ibid, p.486.
38. Legislative Principles, Luce, p.514.
39. Organized Democracy, F.A.Cleveland, p.378.
40. Political Parties and Electoral Problems, Brooks, p.519. In 1917, the Massachusetts Constitutional Convention provided that "By a yea-and-nay vote the legislature may submit to the people a substitute for any measure introduced by initiative petition.

One of the chief problems of democratic nations is to devise procedures whereby the national will shall be most fully expressed and most quickly determined.[41] A direct method for impressing the will of the electorate is the right or privilege granted to citizens to appear before legislative bodies at public hearings on questions of policy, before the final vote is taken. "This is a privilege granted either by statute or legislative rule....."[42] In some instances this right is guaranteed by "constitutional provisions requiring that the sessions must be open to the public, except when occasions arise which in the opinion of the house require secrecy."[43]

The initiative and referendum are devices for the making of laws by mass vote. As a means for expressing popular will, the initiative is a more direct method and a better control over legislation than the referendum. "The initiative as it has been generally adopted in the United States is a device by which a specified number of people (varying from 5 to 8 per cent) may frame a statute and, by petition, submit it to the voters of the state for their rejection or approval. If approved it becomes a law."[44] The initiative may travel its course without including the legislature or,

41. Robert Luce (Legislative Principles,p.550) explains that "the obvious weakness of government by opinion is the difficulty of ascertaining it."
42. Organized Democracy, F.A.Cleveland, p.378.
43. Federal and State Constitutions, Stimson, p.238.
44. Popular Government, A.B.Hall, p. 122.

by requiring some degree of action on the part of that body, may be indirect. In every case, however, the initiative must start out with a petition.[45] In Massachusetts, for example, initiative petitions must first go to the legislature which, in turn, refers them to a committee. "Hearings, open to all parties, must then be held, after which the committee must draft recommendations, with majority and minority reports, and submit them to the legislature."[46] The referendum, on the other hand, is a device by which the electorate may veto a measure passed by the legislature. The referendum is negative while the initiative is constructive. The referendum has long been used without the initiative, notably in the case of the requirement for the submission of constitutional amendments.[47]"The referendum may be optional with the people, being invoked only in case a certain per cent of the people petition for it, or it may be optional with the legislature, the reference to the people being left to their discretion, or it may be compulsory, the constitution providing that every law or every law of certain classes shall not become effective until approved by the people in a referendum." [48] Thus, by the referendum a bill which has already received the approval of the legislative body may be overthrown by the

45. Massachusetts requires 20,000 signatures, and if the legislature refuses to act favorably upon the petition, there is the requirement of an additional 5000 signatures to force its submission to the electorate. Thus the initiative might not go beyond what would in effect be a mass petition to the legislature.
46. cf Note 40
47. U.S. Constitution, Article V
48. cf Note 44; Legislative Principles, Luce, p.574.

popular vote, while the initiative is essentially a device whereby the electorate may enact legislation against the will of the legislature. It should be clear, therefore, that the initiative and referendum are independent and separate of each other even though the common practice is to use one in conjunction with the other.

"Members of the legislature are fortified in their position for the entire time they are elected save that they may be expelled by their own house. If, therefore, legislators were derelict in their duties, they could not be forced to perform them, for a member could not be mandamused..... Not until the people undertook to exercise their powers of sovereignty through the recall was there any provision in the fundamental law for reaching the legislature which refused to do its duty."[49] The recall has been well-defined as "neither more nor less than a special election to determine whether an official shall be superceded before the ordinary expiration of his term."[50] As such, its field of operation is completely different from that of direct legislation. The recall uses petitions in much the same way as they are used in initiative and referendum procedures. It was advocated as a means of increasing popular control over government. Recall laws usually guarantee a period of grace to officials subject to their provisions after which petitions may be circulated which must state briefly the reasons

49. Organized Democracy, F.A.Cleveland, pp.380-381.
50. Political Parties and Electoral Problems, p.525.

upon which the demand for recall is based. To be effective, the petition must be signed by a certain percentage of the voters of the state or district represented by the official under fire. Candidates who wish to run against the incumbent are thereupon nominated by petition or in such other manner as the primary laws may provide. The recall has never been provided for by any constitutional amendment.

The I. R. and R. are devices for expressing sovereign will by the electorate. The initiative and referendum concern the expression of such will on matters directly relating to particular legislation. The recall is a device for expressing sovereign will on the question of whether or not some individual representative or official be recalled from office because of some definitely alleged commissions or omissions. These institutional procedures are especially commendable because they permit the sovereign will to be determined and expressed on definite issues; they allow such particular control by the electorate on designated matters as is practically impossible to achieve through the ordinary channels of legislation. That, in fact, is the reason why these procedures have become institutionalized, to a greater or lesser degree, in the United States. It is not unlikely that the I. R. and R. more nearly reflect and express real sovereign will than does that "legal sovereign"--Congress.

B. Congress as an Organ for the Definition and Expression of Sovereign Will

Since Congress was created as only one of three coordinated branches of government, unlike the English Parliament, it is the custodian of only limited and enumerated powers. "Congress is indeed the legislative branch, but it does a great deal more than merely make laws."[51] Congress is a bicameral legislature. This setup produces deadlocks, delays and division of responsibility; it also tends to a more stable political system, to curb legislation by impulse and to a greater consideration of proposed measures.

1) The House of Representatives was intended to be an organ of government directly representing the general body of the people. "Accordingly, the constitution provides that the members shall be elected 'by the people of the several states.....' No uniform national suffrage system has ever been set up here, either by the constitution or by law. The constitution requires only that for purposes of congressional elections 'the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.'"[52]

"Representation in one house is on the basis of numbers and in the other on the basis of states.....the members of

51. Introduction to American Government, Ogg and Ray, p.403.
52. ibid, pp.404-405; U.S.Constitution, Article I, Sec.2, Cl. 1.

both houses draw their mandate directly from the same source."[53] The Constitution requires Congress to make an apportionment of Representatives every ten years.[54] Representation in the lower house of Congress, therefore, is a legislative matter determined by statute and apportioned according to population.[55]

The Constitution not only stipulates general qualifications for membership in the House of Representatives but, in addition, it makes each house "the judge of the qualifications, elections, and returns of its own members."[56] This gives to each house the power (1) to settle contests (2) to refuse to seat, (3) to declare a seat vacant.[57] An illustrative case was that of Victor Berger, a fiery Milwaukee Socialist, who was elected to represent the fifth district of Wisconsin in the House of Representatives. When he presented his credentials as a member-elect to the 66th Congress, the House, on November 10, 1919, by resolution, declared him, on account of his actions during the war, incapable of taking the oath of office. Berger had previously been convicted for opposing war and violating the Espionage Act. Thereupon, the House declared the seat vacant. In a

53. ibid, p.421.
54. U.S.Constitution, Article I, Section 2.
55. Documentary Source Book in American Government and Politics, Ewing and Dangerfield, Chapter XVII, Section I.
56. ibid, p. 312.
57. Documents and Readings in American Government, Mathews and Berdahl, p. 296.

special election, Berger was again elected. The House, by the Resolution of January 10, 1920 declared him unqualified, disallowing the claim of his opponent to election, and again declared the seat vacant. Because of the loyalty of his constituents, the House's refusals to seat Berger amounted to a denial of representation to this Wisconsin district. Being again elected at the regular election of 1922, and his conviction having in the meantime been reversed by the Supreme Court, he was seated in the House. Berger was later elected to the 68th, 69th and 70th Congresses and served without further disqualification.[58]

Under the terms of the Constitution, Congress meets at least once a year--on the first Monday in December, unless it should choose to fix a different date. This gives each Congress two regular sessions.[59] A newly chosen House of Representatives is called to order and presided over by the clerk of the preceding House until a speaker is elected. He calls the roll of members by states, in alphabetical order; upon this roll are the names of all members-elect whose certificates of election have been forwarded to the Clerk by the proper officials in the various states. If the right to a seat is contested, the matter is referred for investigation and report to one of three standing committees on election, after the House has fully organized. After the

58. ibid: cf reference in Note 55, at pages 314-315.
59. Introduction to American Govt., Ogg and Ray, p.429.

roll-call, the oath of office is administered to all the members in a body (except, of course, those whose qualifications were challenged). The first important step in the formal organization of the House is the election of the regular presiding officer, i.e., the speaker; then a clerk is chosen.[60] While the constitution provides that these officials shall be elected by the House, what really occurs is that the House merely ratifies a slate previously agreed upon by a caucus of the majority members. None of these officials, not even the Speaker, needs to be a member of the House; usually, only the Speaker ever is a member. "After these elections, it is customary for one of the older members of the majority party to move the adoption of the rules of the preceding Congress. If, as is usually the case, any members feel that the rules ought to be changed, this is the time for them to propose alterations; for, once the old rules are readopted without change, it is invariably found next to impossible to bring about reforms in procedure, however desirable they may be as a means of making the House a more effective instrument of democratic government.....The old rules having been readopted, all further proposals for change are automatically referred to the committee on rules--a body regularly dominated by tried leaders of what is commonly called the House "machine," and even more hostile to innovation than the average run of members....It is theoreti-

60. Also a sergeant-at-arms, a doorkeeper, a post master and a chaplain.

cally possible, but usually exceedingly difficult to compel the committee on rules--or any other committee--to report on a matter referred to it, if the committee is itself unfavorable to the proposal.....Therefore, the time to accomplish reforms, if any are desired, is at the very opening of the first session of a new Congress." 61

Let us now turn to a consideration of the powers and prerogatives of the Speaker of the House. He not only puts questions and announces votes, but decides the multifarious questions of parliamentary law that arise during every session. The important power of recognition is also his and he considers himself under no obligation, as does the English speaker, to wield it impartially. In describing this function Mssrs. Ogg and Ray have this to say: "Unless formally recognized by the speaker, no member can obtain the ear of the House.....To be sure, he is bound to follow the rules of the House; and the rules give a certain precedence to some committees or to their chairmen, and certain days are set apart for special classes of business. But, with all due allowances for such limitations, the speaker still has much leeway for exercising his own discretion in granting the floor to members. The speaker also appoints select and conference committees from time to time, but he no longer possesses the prerogative of appointing all committees, as he could formerly."

61. cf reference in Note 59.

The committee system in the American Congress is perhaps the most important part of the formal legislative structure. ".....the power of the committees is so great that it has frequently been stated that the real legislation is accomplished by them. They can kill a bill, amend, revise or rewrite it in any way or even introduce an entirely new bill. Bills go to committee before any discussion has taken place on them....."[62] It is only natural that committees have much power. "It would be out of the question for the Senate or House to pass judgment forthwith on each of the thousands of proposals presented. Hence the resort to committees. They are denounced. They are dubbed 'little legislatures.'"[63] Nevertheless, an elaborate committee system is nowhere more indispensable than in the American House.[64] At the beginning of each Congress, the entire House membership is divided into small groups--standing committees--each to receive, examine and "pigeon-hole" or report on measures of a given type referred to it during the ensuing two years and in some cases also to take the initiative in framing bills. These standing committees are elected. [65] Select

62. Encyc. Social Sciences, Vol. 4, p. 455.
63. Congress-On Explanation, Luce, p. 4.
64. Every biennium the House is confronted with from 20,000 to 30,000 legislative proposals.
65. House Rule X. 1. There shall be elected by the House, at the commencement of each Congress, the following standing committees....2.The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.... 4.All vacancies in standing committees of the House shall be filled by election by the House.

committees are appointed to deal with particular matters. From time to time, conference committees are appointed to confer with similar committees of the Senate on legislation on which the two houses have been unable to agree. "It is in Congress that the conference committee has developed its worst aspects.....Their power lies chiefly in the fact that reports of conference committees must be accepted without amendment or else rejected in toto."[66]

"In size, House committees range all the way from two members up to thirty-five; twenty-one is the standard number. Members rarely serve on more than three standing committees, and the majority belong to only one. Under the present practice, members placed on any one of the ten or more major committees are never given any other standing committee assignment. On every committee, both parties, and sometimes third parties, are represented, in ratios varying according to the distribution of party strength in the House from Congress to Congress.

"From the earliestdays down to 1911, standing committees were appointed by the speaker. Since that date, the House itself has elected, at the beginning of each Congress, subject to the qualification that what the body as a whole does is to ratify lists prepared in advance and presented to it. These committee lists are prepared by a committee on committees, subject to the approval of the majority and minority

66. Legislative Procedure, Luce, pp. 403-404.

caucuses. The majority members on this committee are elected in the majority caucus at the opening of each new Congress: the minority members of the committee are similarly chosen in the minority caucus. The chairman and other majority members of all the remaining committees are then selected by the majority members on this "committee on committees," and the minority members on each committee are in similar manner named by the minority of the "committee on committees." Then the action of these two groups, having first been approved by the respective party caucuses, is reported to the House, which proceeds to the formal election."[67]

2) The United States Senate. Representation in the Senate is on the basis of states and not of population. "The Senate of the United States shall be composed of two Senators from each State, chosen by direct plurality vote of the people, for six Years; and each Senator shall have one Vote."[68]

Like the House of Representatives, the Senate is the sole judge of the qualifications of its own members.[69]

Broadly resembling the House in form of organization, the Senate differs in some important respects. Unlike the House, which has to be reorganized from the ground up every two years, the Senate, a third of whose members retire at

67. Intro. to American Govt., Ogg and Ray, pp. 429 ff.
68. U.S.Constitution, Article I, Section 3, Clause 1.
69. Documentary Source Book, Ewing and Dangerfield, Chapter XVIII, p.337.

any given time, has a continuous existence and to a considerable extent a continuous organization. Even though Senate committees are reelected, with necessary changes of personel, when a new Congress meets, its organization is regarded as having been continuous since the Senate first met in 1789.

The Senate's presiding officer (termed the President) is not chosen by the body over which he presides, but holds such position by the terms of the Constitution.[70] Therefore, partisan and factional contests are avoided except when necessary to fill the chair by the election of a president pro tempore.[71] Presidency of the Senate carries with it little of the power over parliamentary proceedings which is associated with speakership in the House. He more nearly represents the Lord Chancellor who presides over the Lords; thus, he is a presiding officer or moderator, and nothing more. He decides points of order subject to appeal by any senator to the Senate itself.

Despite the fact that the Senate is a smaller body than the House, it has about as many officers and standing committees; extra-legal agencies of party authority are quite as much in evidence. The party caucus, steering committee, floor leader and whips do exist; but neither "conference" nor steering committee wields the unshakable control that

70. Article I,Sec.3,Cl.4 "The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided."
71. Article I,Sec.3,Cl.5 "The Senate shall choose their other officers, and also a President protempore, in the absence of the Vice-President, or when he shall execute the office of President of the United States."

corresponding agencies wield in the House. Individual senators enjoy greater freedom of action and possess more extensive powers of obstruction and decision than do representatives. In the Senate, the minority as well as the majority, has a steering committee. On the whole, however, the same elaborate standing committee system exists, with the exception that the Senate has a few more standing committees which find no place in the House, e.g., judiciary committee, committee on foreign relations.

Senate committees have from three to seventeen members each. Committee positions are divided between the parties in about the same ratio as in the House. In contrast with members of the House, a majority of whom belong to only one committee, most senators must serve on four or five committees. Senatorial committees are composed in the same manner as are committees in the House. Each party caucus appoints a committee to distribute committee positions, including chairmanships; and when the committee selections are approved by the party caucuses, they are reported to the Senate for formal ratification. "In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then by one ballot, the other members necessary to complete the same."[72] Formerly, chairmen or ranking members of a few important committees were able to "exert a disproportionate influence upon legislation because of the

72. Senate Rule XXIV.

rule which required them to be appointed to the conference committees that adjust most of the differences arising over measures passing the two houses in dissimilar form."[73] For example, in the sixty-fifth Congress, 105 conference committees were appointed and 5 senators served on eighty-two of them; Senator Smoot on thirty-three, Senator Warren on twenty-three, Senator Lodge on nine. This situation was remedied to a degree in 1919 when a rule was adopted forbidding any Senator to be chairman of more than one of the ten most important committees or a member of more than two such committees.[74] Except with this modification, the seniority rule holds sway in the Senate to practically the same extent as in the House. "One of the customs of long standing in both houses," so the seniority rule is defined, "is that which elevates members to the chairmanship of committees upon the basis of their seniority of service on such committees.....Thus Senator Borah was given the chairmanship of the important Committee on Foreign Relations because of his seniority of service, although completely out of sympathy with the foreign policies of President Coolidge or of the majority in the Senate itself."[75] As chairman of this committee, the Senator indubitably exerted whatever influence he could--and certain it must be that on many occasions the influence of his position was the determining factor in the committee's decision for action or

73. Introduction to American Govt., Ogg and Ray, p.453.
74. ibid.
75. Documents and Readings in American Government, Mathews and Berdahl, p. 342.

inaction--to make ineffectual what he thought to be improper foreign policy even though such policy be in accord with the manifest will of the Senate. Now, if it be not improper to presume that the majority opinion in the Senate did really reflect the sovereign will, we have here a case in which a single member of this august body, solely by reason of the application of the seniority rule, is able to delay or to prevent the expression of sovereign will. This rule, however, is only one of many. The Senate has its body of printed rules and parliamentary precedents and falls back on Jefferson's manual to a greater extent than does the House. Its rules are fewer and simpler.

3) The Lobby. "Lobby," a small hall, anteroom or waiting room, has by figure of speech come to be applied in the United States to the men who frequent the approaches to legislative chambers for the purpose of addressing individual argument to lawmakers, or of otherwise influencing votes. "Ever since representative assemblies began, citizens have visited them for the purpose of persuasion. Certainly the practice was known in the colonial days of America..... When the colonies had come together, their Congress began at once to be the scene of individual pressure, and under the new Constitution, Alexander Hamilton speedily developed the fine art of lobbying."[76] "Lobbying is the practice of exerting influence upon legislators so as to achieve the passage of desired legislation or prevent the passage of un-

76. Legislative Assemblies, Luce, p. 367.

desired laws. By some it is advertently labelled 'pressure politics.' Hundreds of organized groups retain legislative counsels in Washington for at least a portion of the legislative year. Different lobbyists employ different tactics."[77] Accordingly, lobbyists are attacked or defended. It seems, however, that the lobby has been attacked and discredited more often than it has been praised and defended, so that now "men who for hire work to help or hinder legislation, whether as legislative counsel (i.e., those who appear at public hearings) or as legislative agents (lobbyists), must register their employment in advance, and at the end of the session their employers must report the amount paid."[78]

What justification, if any, is there for the continued existence of the lobby? How does it effect the determination and expression of sovereign will? The argument has been advanced that so long as political parties refuse to function by avoiding real issues upon which intelligent popular will may be expressed, so long is the lobby justified, for it does make possible the advancement of issues through the activity of pressure groups.[79] But there is another and more serious argument for the perpetuation of the lobby. It is true that democratic dogma postulates that the citizenry put the thought of national welfare before that of the individual; such an attitude, it is said, consti-

77. Documentary Source Book in American Govt., Ewing and Dangerfield, p.376.
78. Legislative Assemblies, Luce, p. 372.
79. Our Governmental Machine, Wallace, p. 40.

tutes a well-disposed public sentiment. The citizens should take a broad view of national affairs. Consequently, it is supposed, that "the tendency of associations and leagues of citizens formed for the accomplishment of their own particular purposes, ignores the theory that the general good should be the consideration of the citizen before that of any one group. It fails to consider that men live their lives not as citizens of a state or voters in a congressional district, but as members of various business, social, fraternal and economic units..... They are asked at certain seasons to cease being doctors or grocers or pacifists and become simply citizens and voters."[80] The lobby strives for a more complete representation of the people in Congress. It promotes legislative consideration of the people not merely as Republicans or Democrats but as workers, students, disabled old men and farmers. Thus, the lobby allows for a more adequate determination of the sovereign will, and consequently, for a truer expression of such will. Under the theory of representative government (explained supra) whereby legislators are presumed to hold to a broad national point of view and think only in terms of the public good, a multitude of groups have sprung up and are actively at work day in and day out in the definite role as spokesmen for

80. Group Representation Before Congress, Herring, p.4.

the citizens they represent. When the legal machinery of representation was established by the Constitution, the party developed as a means of working this machine. Now "there has developed.....an extra-legal machinery of as integral and of as influential a nature as the party system of government that has long been an essential part of government, though not originally incorporated within the Constitution."[81]

"It is at the hearings held by the congressional committees that the lobbyist today performs his heavy work. The legislative processes thus give the lobbyist a very excellent opportunity.....most of the real work is done in committee where many of the real workers are the lobbyists. They are the men with the facts at their command..... The legislative agent arranges the data to be brought forward and selects the witnesses of his groups. He is truly a member of the 'assistant government.'"[82]

One more word about the lobby. It is a well-known fact that the party caucus disciplines party members (in various ways) and that any deviation from the policies as determined by the party is punishable. Consequently, party members generally adhere to party policy. If an organized group brings pressure to bear on a congressman and threatens to defeat him at the polls unless he supports its measure, he

81. ibid, p. 18.
82. ibid, p. 71.

may well hesitate to adhere to the party policy if the measure is opposed by the party caucus. As a matter of fact, "a powerful group acting as the representative of an influential body of citizens often has the support of the dominant party"[83] by virtue of the fact that it represents a definite group of citizens who by their very organization become powerful.

4) The "Invisible Government." To define democracy as that form of government in which the people rule is to give only half a definition. "It is a form of government in which the door is thrown open for the free play of powerful deterministic factors of a physical or psychological character, acting through the intermediary of the popular will..... One of the laws of politics which popular sovereignty must obey is the law of geographic determinism. (Geography creates political problems and often determines the manner of their ultimate solution.).....The determinism of racial heritage is a factor which all intelligent students of comparative politics take into their reckonings.....The sovereignty of the people is assumed to manifest itself in the rule of the majority, but this assumption collides with another law of politics, to wit, the inevitable inclination of all governments to autocracy." [84] Because of the inherent tendencies of governments to become governments by minority, because of political manoeuvring, such as the gerrymander,

83. ibid, pp.248-249
84. The Invisible Government, W.B.Munro, pp. 32,37,41,45.

because of the prejudices (class prejudice, race prejudice, sectionalism, etc.) which have manifested themselves in the government by becoming institutionalized forms of behavior, "if there is one thing in connection with our legislative bodies that should be emphasized, it is the fact that they do not accurately reflect the opinion of the country."[85] Perhaps the most important deterministic factor in our "invisible government," and one which is often lauded, is the political party. Many strong partisans argue the virtues of party promotion and party obligation. "They, too, believe in responsibility, but in responsibility to party leaders rather than to the electorate. Such a doctrine is far from absurd.....Without organization nothing but chaos is to be expected. Organization in politics is just as useful and admirable in politics as in religion, philanthropy, business, or any other of the social activities in which men join." And it certainly is true that "even in Congress (despite organization(?)) the public welfare is for the most part the immediate rather than the ultimate consideration."[87] But can there not be too much organization? The formal machinery of the legislature provides for a speaker, other officers and committees as agencies of the House as such, designed to enable it to carry on business expeditiously and effectively. But this formal machinery for House Control is enveloped and

85. Our Governmental Machine, Wallace, Chapter XIII.
87. ibid, page 503.

exceeded in actual power by an "invisible government" developed by party practice and quite unknown to the rules. "This extra-legal government consists primarily of the party conferences or caucuses (i.e., private meetings of the members of the House who belong to a given party), but includes two further instrumentalities created by the caucuses, the majority party's "steering committee" and the majority and minority floor leaders."[88] The operations of the majority caucus extend to, at least (1) selection of the House officers (2) listing members to be elected to the various standing committees (3) agreement upon plans for united action on policies or measures before the House (4) supervision and control of reports of important committees,[89] and (5) actual shaping of the detailed provisions of leading legislative measures. As to the speaker, instead of really electing him as the Constitution provides, the House merely ratifies the slate of officers upon which the majority caucus agreed. In view of the strict party discipline which usually prevails, the decision of the majority in the majority caucus determines the formal action of the House as a whole; thus it is quite possible for a member to be elected speaker who is not favored by the majority of the House as a whole.

88. Introduction to American Government, Ogg and Ray, p.444.
89. The Democratic majority caucus, April 1911, adopted a resolution which directed the Democratic members of the various committees of the House not to report to that body on important legislative matters until they had first communicated their proposed action to the caucus and had received permission from that body to report.

The majority caucus functions through its steering committee and the chairman of this committee, the majority floor leader. The steering committee decides which bills to advance to final consideration and keeps "the tracks clear--with the powerful assistance of the committee on rules--for favorable action upon them."[90] The floor leader plans the debate and determines, in conjunction with the minority leader, at which time the vote shall be taken. It is obvious, therefore, that the caucus machine, which is itself controlled by a comparatively small group of experienced leaders, controls the House procedure and keeps party members in tutelage, because "all party members, whether in attendance at a caucus or not, are bound by the action taken, unless released by the caucus itself: and the only grounds upon which members are likely to be released are constitutional objections and pledges to constituents to take a different course from that decided upon by the caucus. The action of a Democratic caucus is binding upon members only if two-thirds have concurred."[91]

90. ibid, p.447
91. ibid, p.448

C. Congressional Procedure.

There are many external features of similarity in the parliamentary procedure of democratic assemblies. Bills are introduced, discussed by committees, debated on the floor, amended and voted upon. This similarity may be explained on two grounds, (1) the nature of the task and (2) the fact that the procedure in most great legislatures developed out of that in the Mother of Parliaments. "The influence of the House of Commons was exerted most directly upon Congress through the Manual of Parliamentary Practice which Thomas Jefferson as Vice-President drew up to govern the procedure of the Senate over which he presided. Jefferson simply restated the current English practise, drawing freely upon Hatsell's Precedents. The Manual was adopted by the House of Representatives in 1837; it still regulates the procedure in both houses except as subsequently modified."[92]

1) Authorship and Introduction of Measures. Although the President or the head of an executive department may suggest, or even assist in framing a bill, it may be got formally before Congress only by being introduced by an ordinary member of one of the two houses. The most important measures, such as tariff and currency bills, usually emanate from the appropriate committees. "The Constitution requires

92. Encyclopaedia of Social Sciences, Volume XII, p.455.

that all bills for raising revenue shall originate in the House of Representatives. Every other kind of measure may make its first appearance in either house; indeed, through its right to amend revenue bills, even to the extent of substituting new ones, the Senate may, in effect, originate them also."[93]

Any member may, at any time, get a bill on the calendar of the house of which he is a member by merely depositing a copy of it, endorsed with his signature, in a box on the clerk's table, or if it is a public bill by handing it to the presiding officer. If he wants or needs help in drawing up his measure, he may avail himself of the legislative drafting service[94] of which there is a branch for each of the two houses. "The bill is first dropped, let us say, by Mr. X into a basket on the clerk's desk known as "the hopper." The Speaker's clerk goes through the batch of new bills, and assigns the X bill to the committee having jurisdiction. The bill is numbered and proper records are made of its introduction and the bill is sent to the Government Printing Office where a number of copies of it are struck off. The copies are deposited in the Document Room of the House, where they are procurable by the members."[95]

93. Introduction to American Govt., Ogg and Ray, p.455.
94. Established in 1918.
95. Congressional Digest, Vol VII, Feb. 1928.

On the average the House receives about 15,000 bills during a long session, and the Senate a third as many, or more. Many bills wear "by request" labels; this means that the members formally introducing them disclaim all responsibility for them. Therefore, members are usually willing to introduce measures, however ill-considered and fantastic, at the request of persistent lobbyists or of interested groups of voters. Thus, "the true source" of the general run of bills introduced "may usually be found in some administrative official, or in some organization, or in some constituent with a grievance, an ambition or a hope. Congress is not to any material extent an originating body."[96] The introduction of bills, it is well to note, is limited to the members of Congress. No ordinary individual or group can bring to the official attention of Congress any question of social justice or public policy, unless a member of Congress consents to do this for him. As a matter of fact, however, because of the common use made of the "by request" labels, almost any person can have his or some other Congressman introduce a bill. Consequently, there is adequate provision in the American legislative procedure for directing official notice to the many matters of public policy.

96. Congress-An Explanation, Luce, p.3.

Once a bill has been introduced, i.e., official attention has been directed to a particular matter, provision should be made for the definition of issues. This task is assigned to the committee.

2) Reference to Committees. After the bills are numbered and recorded by the clerk, they are referred to standing committees. "Private bills are turned over automatically to the committee designated in each case by the introducer. Public bills are sorted out and assigned, according to the rules governing the subject, by the clerk."[97] When a bill can be assigned with equal appropriateness to more than one committee, the Speaker decides what shall be done, different parts of the bill being sometimes sent to different committees. Occasionally, a bill is recalled from one committee and sent to another. In any case, after being referred, the bill is printed and distributed to all House members.

3) Committees. Because Congress is usually in session in the afternoon, committees regularly meet in the forenoon. No House committee (Committee on Rules excepted) may hold a meeting while the House is in session, without special permission.

97. cf. Note 93.

If and when committees are overburdened with work, they may create sub-committees (consisting usually of five members) to which they may assign measures or classes of measures or even individual sections of the same measure. These sub-committees, like the committees themselves, contain representatives of both parties with the majority party always in control. After apprising itself of the contents of a bill, the committee decides whether legislation is needed, whether the present bill is adequate and the probable consequences of its passage. "The members of the committee obtain the desired information by availing themselves of (1) the resources of the committee library (2) the Library of Congress (including the division of legislative reference) (3) departmental files (4) studies of its sub-committees (5) recommendations of special committees or commissions of investigation, authorized, or even appointed, by Congress (6) data derived from investigations of governmental executive officers at the request of Congress and (7) especially by holding hearings at which almost any person having interests at stake, or having information or ideas to present, can appear, whether in favor of or opposed to the bill.

These committee hearings resemble court procedure; paid attorneys argue for or against the bill and interested persons give testimony, while the committee members listen and ask questions. Attendance of the general public is permitted, though not encouraged."[98]

Thereafter the committee goes into executive session and reaches its conclusions in private. It is considered breach of good faith for any member to reveal what occurred in committee and the votes taken are never made a matter of public record. In discussing executive sessions, Robert Luce had said[99] that here is "the most interesting, important and useful part of the work of a congressman, and the part of which the public knows nothing. Indeed, the ignorance of the public about it is one of the causes of its usefulness. Behind closed doors nobody can talk to the galleries or the newspaper reporters. Buncombe is not worth while. Only sincerity counts." The committee may report the bill unchanged, modified, frame a new bill in the alternative or may make no report at all, i.e., "pigeon-hole" the bill. Only about 30% of all bills and resolutions introduced get beyond the committee stage. Generally, measures which do not strike the fancy of the committeemen offhand are "pigeonholed."

"Under a rule adopted in 1925 (Rule XXVII clause 4)

98. cf Note 93
99. Congress-An Explanation, p.12

it is possible to discharge a committee which has had a given bill or resolution for as long as thirty days provided (a) a petition for such action has been signed by a majority of the House (b) a motion to discharge has been seconded 7 days later by a majority and (c) after debate, a majority votes to discharge.....For all practical purposes, however, any bill can still be killed in its initial stage by simple failure of the committee, having it in charge, to report."[100]

If the committee decides to report it in its original form or with amendments, "it is then reported to the House by the committee with a recommendation that it be passed..... The Clerk receives the bill and refers it and the report to the Calendar.....If in the view of the Rules Committee the bill deserves prompt and special consideration that committee may bring in a rule for its immediate consideration and prescribe the terms under which it may be considered, overriding all rules save the rule for a motion to recommit."[101]

The framing of revenue measures is the peculiar function of the Committee on Ways and Means in the House, which, together with the corresponding senatorial committee on finance, because of the political importance of such measures, has become second in importance to no other strictly legislative committee. "In the framing of tariff bills the minority members of the committee have little or no influence.

100. Introduction to American Govt., Ogg and Ray, p.461.
101. Documentary Source Book in American Govt. and Politics, Ewing and Dangerfield, Chapter XIX.

The majority members are divided into a number of subcommittees, each of which is charged with the preparation of some portion of the bill (during which process).....public hearings may be held for the purpose of gathering information; and lobbyists, representing the varied special interests which are likely to be benefited or affected adversely by tariff changes, are actively engaged in attempts to influence the action of the majority members of the committee."[102] After the majority members have agreed on the final form of the bill, the minority members are called in so that a vote may be had on the measure. It is then reported to the House where it is debated and where the minority is given an opportunity to express criticism after which the bill is invariably passed as a party measure. Having passed the House, the bill goes to the Senate from where, if important changes are there introduced, it goes back to the House and is immediately referred to a conference committee representing both houses which attempts to effect a compromise. Whatever this committee agrees upon, and it works in secret, is almost certain to pass both houses.

102. cf. Note 100. To the effect that there have been certain instances in which schedules were prepared outside the committee by lobbyists and representatives of industries peculiarly interested in them which were accepted by the committee practically unchanged see Whom Does Congress Represent? C.A.Beard, Harper's Magazine, January 1930, pp. 144-152.

Recapitulating, the committee has a three-fold function--(1) it should define the issues relative to the particular bill or proposal under consideration (2) it should enable all parties who could be helpful to appear and give pertinent testimony, and (3) it should determine the facts and report its conclusions to the main body of the House. Let us examine the situation with greater particularity and see what really does occur. As has already been noted, since so many bills are introduced that full and adequate consideration to each is a virtual impossibility in the main body of each House, the bills are referred for consideration by committees. If each committee were to be ideally efficient and report its findings on every bill referred to it back to the House, the latter would then have to permit either a clogged calender, in which case the majority party would be publicly branded by the minority group as grossly inefficient, or the House would have to act on every bill it referred to the committees, in which event both majority and minority groups would have to account to John Q. Public for their actions on every bill--a distasteful matter to both. Consequently, the committees are ideally inefficient and report back to the House only such matters as tend towards the fulfilment of the majority party program, or some other measure which the majority party is willing to dramatize--and, of course, then only after such action

has been ordered by the party caucus.

Again, since committees are constructed along party lines and since the majority party is interested in the passage of measures which tend to fulfill its promises, the issues framed and discussed are inevitably tinged with party sentiment, except in rare cases. The reliance of Congressional committees on legislative counsel and agents for the appearance of interested parties is notorious to all persons at all familiar with this procedure. This practice, however, should not be too hastily condemned. Legislative counsel represent interests in manner not unlike attorneys who represent clients in judicial courts. Legislative agents are experts in their fields and the aid and assistance which they render to the committeemen saves many hours, and even weeks, to the latter as well as dollars to the public. Finally, the committee must decide the facts. This it generally does. But the report goes to the party caucus. Whether the facts revealed in the report will ever be made public is determined by that irresponsible majority caucus. This unofficial body, accountable to no one, determines whether any cause will have its day in court.

4) The Calendars. A bill reported back to the Clerk of the House is placed on one of the three "calendars," which

means that it is before the House for consideration at such time as it can be reached. The calendars are:--(1) Calendar of the Whole House on the State of the Union (i.e.,Union Calendar). Revenue bills, general appropriation bills, public bills directly or indirectly appropriating money or property are listed on this calendar. (2) House Calendar. This calendar contains public bills not directly or indirectly appropriating money or property. (3) Calendar of the Committee on the Whole House (i.e.,Private Calendar). Private or "special" are placed here.

Theoretically, bills are considered in such order as they appear on the calendars. As a matter of practice, however, because of the congested condition, the most important bills are selected and considered, even though out of turn.

5) The Order of Business in the House. The normal order of daily business has been described as follows:[103] "(1) speaker calls the House to order: (2) chaplain offers prayer: (3) journal of previous day's proceedings is read and approved: (4) reference to public bills is corrected: (5) business "on the speaker's table," i.e., presidential messages, bills with Senate amendments, etc. which await the speaker's presentation to the House, is dispose of: (6) "unfinished" business engaged in at the time of adjournment is completed: (7) "morning hour" is given to a consid-

103. Introduction to American Government,Ogg and Ray, p.461.

eration of general bills called up from one of the calendars by committees which have reported favorably: (8) if time allows, the House goes into committee of the Whole to discuss bills on the Union Calendar, or, if none such are pending, on House Calendar. The House, on motion of a member, votes to resolve itself into a committee of the Whole to consider private bills or some certain public bill; the speaker yields the chair to a special chairman whom he designates; 100 members constitute a quorum instead of the majority required when the House is in regular session; debate proceeds informally, only 5 minutes allowed to each speaker unless with unanimous consent; no roll-calls; divisions are taken by rising vote or by tellers; when consideration is completed, the committee votes to "rise," the speaker receives the chair and chairman of the committee reports the action taken with such amendments as may have been recommended. The House must, of course, act affirmatively upon committee's report in order to give it effect."

6) The "Three Readings." To be passed, every bill or resolution must have three readings.[104] The first reading is by title only: "This requirement is deemed met by printing the title in the Congressional Record and Journal. The bill then goes to a committee, and if reported back is placed upon the calendar for a second reading at a date agreed upon between the committee and speaker and the majority floor leader."

104. ibid.

The second reading takes place in the committee of the Whole or in the House itself and consists of an actual reading in full with opportunity to offer amendments. A vote follows on the question, "Shall the bill be engrossed and read a third time?" Debate usually takes place on ordering the bill to a third reading, the members of the committee speaking alternately pro and con on the question, if the report is not unanimous, and finally, if time remains, members of the House are recognized. Exdept with unanimous consent, no member may speak for more than an hour. Debate is closed chiefly by advance agreement or by moving the "previous question," in which case, if it is carried with a quorum present, the vote is forthwith taken on the question. If there has been no debate at all, the Speaker is required to allow a discussion lasting for 40 minutes.

If this stage is successfully passed, the third reading takes place, by title only, unless a member demands a reading in full. Then,--after engrossment--and only then, comes the vote on the measure's final passage. If it is now passed, the bill or resolution is ready to go to the Senate.

7) The Methods of Voting. There are four methods of voting in the American Congress. First, a division by simple sound of voices, that is a viva voce vote. Second, any member may demand a rising vote whereupon the supporters of each side of the question are counted. Thirdly, one-fifth of a quorum may demand a vote by tellers. Members in favor

of the measure, followed by those opposed, pass between the tellers who declared the result which is announced by the chair. And fourthly, one-fifth of those present may demand a "Yeas and Nays" vote. The clerk calls the members' names who respond Aye or No. The individual votes are recorded and the result is then announced. This method may be demanded before any other method has been employed. When the question is one of passing a measure over a presidential veto, the Constitution requires the Yeas and Nays to be taken and recorded.[105]

8) The Procedure in the Senate. After a bill is passed in the House, it is certified by the Clerk who then carries it to the Senate Chamber where it is received by the presiding officer. The Vice-President then refers it to the appropriate Senate Committee where it undergoes another process of examination substantially in the same way as in the House.[106] There are some important differences, however, between the Senate and House procedures. First, not only revenue and other financial measures, but all bills are considered by the Senate in Committee of the Whole and without change of presiding officer. Secondly, there is no privileged business[107] in the Senate so that the calendar order is followed unless there is unanimous consent or a majority

105. Article I, Section 7, Clause 2.
106. cf Note 101.
107. Practically, however, appropriation bills enjoy a certain priority.

vote to the contrary. Finally, there are no restrictions on the length of speeches, except as are occasionally agreed to in respect to a particular measure. "No senator may, without consent, speak more than twice on the same subject in a single day. Except for the "unanimous consent" procedure and the infrequent use of the closure rule, adopted in 1917, to prevent filibustering, debate proceeds without limitation."[108]

9) Conference Committees. If the bill is amended by the Senate and the House accepts the amendment, the bill, as amended, is signed by the Speaker and Vice-President and is presented by the Committee on Enrolled Bills to the President. If the two houses fail to agree on the amended bill, it is submitted to a committee representing both houses which attempts to smooth out the points in disagreement. "If agreement is reached by this committee, an identical report is made to each house under rules that prevent amendment but permit only acceptance or rejection of the report as a whole."[109] Since the House and Senate each may amend

108. Senate Manual, Rule XXII. A petition to close the debate must be signed by 16 senators. On the second calendar day after this petition has been filed the roll of senators is called on the question,"Is it the sense of the Senate that the debate shall be brought to a close?" If there is a two-thirds vote in the affirmative, the measure becomes unfinished business until disposed of, to the exclusion of all other business, no amendments being thenceforth allowed and no senator being permitted to speak more than one hour altogether and all points of order being decided by the chair without debate.
109. Documents and Readings in American Government, Mathews and Berdahl, p.344.

the bills of the other, and since no bill can become law until and unless every part and feature of it has been concurred in by both branches of Congress, the services of a conference committee are regularly used to iron out differences, and it is for that reason that its recommendations are generally accepted by both houses.

10) The Final Stages. When a bill is passed in identical form by both houses, it is "enrolled" (i.e., written or printed on parchment) and is thereupon signed by the presiding officers of each house and sent to the President for his approval or veto. If it is vetoed, it goes back to the house in which it originated for reconsideration; it may become law then only if it is thereafter passed in both houses by a two-thirds majority vote. The President may approve a bill by signing it. "If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law." [110] If the bill is signed, or if it becomes law through presidential inaction, it is transmitted to the Department of State, to be deposited in the archives, and also to be duly published.

110. U.S.Constitution, Article I, Section 7, Clause 2.

## ENGLISH PROCEDURE FOR THE DEFINITION AND EXPRESSION OF SOVEREIGN WILL.

### A. Parties Participating.

"Ordinarily there are three parties to legislation--the King, the Lords and the Commons.....Laws are made by an assembled Parliament, and by the concurrence of one House or both the Houses of which Parliament consists, and of the Crown.....Under exceptional circumstances which may arise under the provisions of the Parliament Act, legislation is affected by the King and Commons alone."[1]

The Cabinet. In thus describing the parties participating in English legislation, Sir William must have referred to the formal parties only. There can be no real and intelligent discussion of English legislation without a consideration of that extra-legal body known as the Cabinet. It is the cabinet ministers who guide and control the work of Parliament, in both branches. "They prepare the Speech from the Throne in which the condition of national affairs is reviewed and a program of legislation set forth at the opening of every parliamentary session: they formulate, introduce, explain and urge the adoption of legislative measures upon all manner of subjects.....In short, the cabinet ministers make decisions and formulate policies on all weighty matters requiring attention, and ask of Parliament

1. The Law and Custom of the Const.,Sir William R.Anson,Vol.I, p.47.

only that it take whatever action is requisite to make these decisions or policies effective."[2] In other words, the cabinet plans the business of government; it submits, explains and defends its policies; and finally, it executes such of its plans and policies as are approved by Parliament. The cabinet is a real party participating in the English legislative process.

The Cabinet consists of a prime minister and of those ministers considered of great enough importance to warrant their inclusion in the executive advisory council which decides upon the main lines of policy; the cabinet is an inner group of the ministry. These members are not appointed as members of the cabinet (the cabinet is neither formally nor legally recognized[3]) but are elevated to membership in the King's Privy Council. The number of cabinet members varies from time to time.[4] Cabinet members have a dual responsibility: they are collectively responsible to the King and to Parliament and individually responsible to each other. "The most important collective function of the cabinet is to formulate the policy of the nation and the legislative program for each session of Parliament. The various items in this program are then introduced as government measures with the prestige of a unanimous cabinet behind them.....When

2. European Governments and Politics, F.A.Ogg, p.99.
3. Not a single word may be found in the written laws concerning its composition, powers, duties, or responsibilities.
4. The usual number is about twenty.

the British prime minister and his cabinet announce that a bill will be introduced, or a new tax levied, or a treaty concluded--the announcement of their decision virtually settles the matter. Parliament must accept their decision or get a new ministry from top to bottom."[5]

The prime minister, head of the ministry, cabinet and government, is the leader of that political party which controls a majority in the House of Commons. He is always a party leader. "Each political party determines for itself the methods by which its own leader is chosen. Ordinarily, however, the selection is made by a caucus which is attended by the party's membership in the House of Commons along with various other prominent party workers."[6] When one cabinet loses the confidence of the House, the leader of the opposition is called to form a new cabinet. Although ministerial responsibility does not postulate a two party system, this principle "can be much more smoothly operated when there are only two parties, one controlling the government and the other constituting 'the opposition'.....cabinets which are formed from a single party, and are supported by a single party, do far better work than those which represent coalitions and are supported by blocs."[7]

The fact that every minister must be a member of one of

5. The Governments of Europe, W.B.Munro, p.83.
6. ibid, p.69.
7. ibid, p.88.

the Houses of Parliament does not mean that he must be such a member at the time of his appointment. If at the time of his appointment to the ministry he is not a member of either House, he may become a member of Parliament either by being elevated to a peerage and thus acquiring a seat in the House of Lords, or, as is usual, by opening a constituency, i.e., inducing some member of the House of Commons to vacate his seat and make way for the newly-appointed minister. The statuatory rule of 6 Anne, that any member of the House of Commons who accepts a position of profit from the Crown should thereby lose his seat, was modified in 1919 by The Reelection of Ministers Act[8] so that the acceptance of a ministerial post within nine months after a general election, by such a member, does not compel the new minister to vacate his seat. In any other case, "on accepting office, the new minister must go home and get himself reelected."[9]

Theoretically, the Cabinet is responsible to the House of Commons for everything that it does; but in reality, the House acts in accordance with its leadership and direction.[10] "Modern rules of procedure give to the Government of the day a large control over the time of the House for the purposes of its own business, while the introduction of the closure leaves the time for discussion of a government meas-

8. 9 George V, Chapter 2.
9. Governments of Europe, Munro, p.73.
10. ibid, p.81.

ure very largely in the hands of the Government. The consequence of these various features of our political life at the present time is to make the House of Commons dependent on the Cabinet rather than the Cabinet on the Commons. The threat of dissolution.....issuing from the Prime Minister as representing the collective wisdom of the Cabinet, may secure the continued loyalty of a majority in the House of Commons long after the composition of the House has ceased to correspond with the political opinion of the country. A member may have ceased to be in sympathy with the members of his party, but he may also feel that small as will be his chances of re-election in any event, that they would disappear altogether if he broke the bonds of party allegiance."[11] Nevertheless, the ministry is responsible to the Commons; and although there is no statuatory requirement that it go out of office whenever it loses the support and confidence of the majority, "by a custom which has now prevailed for nearly 200 years, it is bound to do so. The ministry must always be able to demonstrate, by vote of the majority in the Commons, that it possesses the confidence of the country. Loss of this confidence means loss of office."[12] The House of Commons may demonstrate its lack of confidence in the Cabinet by voting to reduce a minister's salary, by rejecting a government measure, by enacting a measure which

11. Law and Custom of the Constitution, Anson, Vol.II,p.135
12. Governments of Europe, Munro, p.85.

the cabinet opposes, or by simply passing a resolution declaring its want of confidence. It is then the privilege of the cabinet to make an appeal to the people, by advising the king to dissolve Parliament and to order a general election, or, to resign.[13] "It is true, I think, to say that in the last one hundred years the power which determines the existence and extinction of Cabinets has shifted, first from the Crown to the Commons, and then from the Commons to the electorate. But it is no longer true that the House of Commons is always a close reflection of the opinion of the country or that it responds to changes of public opinion as they may occur during the existence of a parliament."[14]

It is no longer as important, as it was formerly, for the Cabinet to "retain the confidence" of the House of Lords. The Lords may not be sent home and told to be reelected; on the other hand, their decisions are not final and binding (see discussion infra) and do not present any insuperable obstacles to the execution of the cabinet's proposals.

English parliamentary procedure is based on the principle that the dominant political party, through its majority in the House of Commons, under the leadership of the ministry, is responsible for the fulfillment of its program. There are no checks and balances to stand in its way; it cannot

13. ibid, p. 86.
14. Law and Custom of the Constitution, Anson, Vol.II,P.133.

avoid, make excuses or blame some other branch of the government. It has been said that the cabinet is the "executive committee" of Parliament. "Parliament is assumed to reflect the will of the people, and the cabinet is charged with the function of carrying this popular will into effect through its advisory control of the crown."[15] Said Sir William, ".....the Cabinet is the motive power in our executive."[16] Thus, as members of the Privy Council, the members of the Cabinet are the real sources wherefrom emanate the executive Orders-in-Council issued by the Crown.

The House of Lords. This organization, the oldest legislative body in the world, has a membership of about seven hundred men. It consists of more than six hundred English peers, sixteen peers from Scotland, twenty-eight from Ireland and twenty-six "lords spiritual," i.e., two archbishops of the Established Church (Canterbury and York) together with twenty-four bishops.[17] These persons are members of the House of Lords by virtue of the particular status which is theirs and not because they stand for any special principles or because they represent any particular party; although as a matter of fact the complexion of the opinion in this House is decidedly conservative. Membership in this body continues throughout the lifetime of the member. Englishmen may become members of the House of Lords through

15. Governments of Europe, Munro, pp.76,197
16. Note 14 at page 142.
17. Governments of Europe, Munro, pp.106, 110

being elevated to a peerage[18] because of some significant contribution to civilization or because of some other outstanding achievment. "So while the House of Lords is unrepresentative in the usual sense of the term, it is not altogether unrepresentative of the best in British national life--in industry, finance, agriculture, commerce, law, religion and scholarship."[19]

The sessions of the House of Lords are presided over by the lord chancellor who is appointed by the Crown upon the advice of the cabinet. Although usually he either is or is made a member of this House, there is no legal requirement to this effect. The Lords meet in sessions coincident with those of the Commons. "When the House of Commons ends its session the upper chamber does likewise; but each House can adjourn separately."[20]

The lord chancellor puts motions, but does not have any disciplinary powers. He "is not to adjourn the House, or do anything else as mouth of the House, without consent of the Lords first had, except the ordinary thing about bills.... wherein the Lords may likewise overrule."[21] "He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides, if necessary, whom it will hear."[22]

18. Members of the peerage have no votes at parliamentary elections (ibid, p.115)
19. ibid, p.127("A peer has no constituents to humor or impress. He represents no one but himself." p.117)
20. ibid, p.116
21. Standing Orders XX 22.Govts of Europe,Munro,p.116

A quorum to do business consists of three members; at least thirty must be present to pass any law.[23] The House rules are very liberal. Any peer may initiate a debate at almost any time and on any matter of public importance by merely "moving for papers" (i.e., offering a resolution asking that certain official documents be laid before the House). Thus, a full discussion may be precipitated in the Lords at any time on any question on which a long debate in the Commons is precluded by the pressure of business. This is the way in which the Lords may draw public attention to any question.[24]

In the House of Lords, unlike the House of Commons, there are no standing committees for public bills. All bills, after two formal readings are debated in Committee of the Whole House before being read a third time. Debates cannot be shut off by using the closure. If amendments are adopted, the measure goes back to the Commons for concurrence. "Then the House of Commons either agrees to the amendments, or insists on its own way, or some compromise is reached by an informal conference. Failing this, the bill is deemed to have been rejected, and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down in the Parliament Act."[25]

23. ibid
24. ibid, pp.116-117
25. ibid, p.126.

Financial measures must originate in the Commons; any other public bill may be introduced in the House of Lords. "Until 1911 it was technically the privilege of the Lords to reject any bill, even a money bill. But by non-use the upper House had lost its right to amend any financial measure, and in the opinion of many constitutional lawyers it had also lost, by non-use over a long term of years, its right to reject, although the Lords themselves had never conceded this loss. As to bills other than money bills there never was any question, prior to 1911, that the House of Lords might both amend and reject anything sent up by the Commons. Under ordinary conditions when the House of Lords rejected a measure that had been passed by the Commons there was some grumbling in the Green Chamber but nothing happened. If the rejected bill was an important government measure, introduced by the ministers and passed under their guidance, the prime minister could advise a dissolution of parliament and a general election on the issue. This would put the matter before the high court of public opinion for judgment. Then, if the people upheld the ministry, the Lords were expected to give way, which they usually did."[26]

It was not until 1909 that a dead-lock over the Lloyd George budget between the Lords and Commons arose in such form and assumed such bitterness as to compel the making of

26. ibid, pp.118,119.

a new provision which took the form of the Parliament Act of 1911. The outstanding provisions of this Act are:--

1) Money measures, if passed by the House of Commons, become law one month after such passage, even though the Lords withhold their concurrence.

2) In case of disagreement, the decision of the Speaker of the Commons is final and conclusive on the question as to whether a bill is a money bill within the definition provided in the Act.

3) Any other public bill passed by the Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, becomes law on receiving the assent of the Crown, notwithstanding the failure of the Lords to approve the measure. To be exact, the two year interval must elapse between the date of the first occasion on which the bill receives its second reading in the Commons and the date of its final passage for the third time.[27]

4) The maximum duration of a parliament is to be five years instead of seven, except that Parliament can at any time extend its own lifetime beyond this five year term if any emergency so requires.

The Lords suggested an alternative scheme which was

27. The Act specifically provides that this stipulation shall not apply to any measure extending the duration of Parliament beyond its present maximum of five years.

not acceptable to the Commons. It was not until another general election had been held and a threat to create new peers had been issued that the upper chamber was "cowed into submission" to accept this bill. Thus today, the general utility of the House of Lords in the legislative process is that it examines and revises non-financial measures. When the occasion arises, it may compel a full public discussion of a measure before it is enacted into the law of the land. By interposing this delay before passage of a bill, the House of Lords gives an opportunity for passions to subside and for a calm, sober second thought to prevail.

The House of Commons. This body is the classic example of a legislature with virtually unlimited authority. The absence of any constitutional restraint gives it supremacy in lawmaking. The present House consists of 615 members coming from England, Wales, Scotland and Northern Ireland (Ulster). The country is divided into constituencies from which members to the House of Commons are elected. Most constituencies elect one member; there are, however, some two-member constituencies. Each member represents about 75,000 persons or about 40,000 voters.

Although members are elected by constituencies, they regard themselves as representatives of the United Kingdom, at large, and do not think of their own districts first, last and always.[28] But this does not mean that the average

28. Governments of Europe, Munro, p.164.

member enters the House of Commons unpledged and independent. "Under the present system, with the increased strength of political organization, a candidate offers himself, not so much on his own merits, as because he is the nominee of the political association or caucus which professes to represent his party, and because he undertakes to support a given programme and the leaders of the party."[29] Edmund Burke's argument that "your representative owes you not his industry only, but his judgment also, and he betrays instead of serves you if he sacrifices it to your opinions..... I did not obey your instructions. No, I conformed to the instructions of truth and nature. I maintained your interests against your opinions"--this argument was rejected by his constituency; he was defeated. And Professor Munro defends the decision of Burke's constituency as follows: "A government in which a few people, howsoever chosen, determine on their own discretion what the rights of other people are, and what the people's well-being demands--such a government would not be a democracy, but an oligarchy."[30] Thus, members of the House of Commons are expected to adhere to the party platforms and policies.[31] Both the public and the members of parliament determine this relationship. Generally, the electors of a constituency can vote for only

29. The Law and Custom of the Constitution,Anson,Vol.II,p.134
30. Governments of Europe, p.165.
31. Law and Custom of the Constitution,Anson,Vol.I,p.151 "In the great majority of constituencies candidates are chosen on strictly party lines."

one candidate. "They must choose between two, and each one of the two may be the nominee of the most zealous and uncompromising members of the two political parties. It is very possible that to a great many electors the two candidates are alike distasteful. Men of independent judgment may not care to vote for a candidate whose chief recommendation is that under no circumstances will he draw his support from a given statesman, the leader of his party; or that he accepts with implicit faith a set of dogmas or a scheme of proposed legislation drawn up by active party managers. Yet if they do not vote for such a candidate, they must vote for his opponent, whose opinions may yet be more distasteful to them, or they must cease to exercise the privileges of an elector."[32] Thus, since large bodies of men have some difficulty in arriving at decisions, and since many refrain from voting, "the candidates of each side are selected by the really eager or extreme representatives of each party in the division."[33] This does not mean, however, that the real and continuing tie between the electors and elected is this or that group of extreme partisans within the party. "Public opinion has made the tie between the members and constituents (who are represented in and express themselves through parties) reciprocal. A member, during the lifetime of a Parliament to which he has been

32. ibid. "The advent of third party candidates tend to confuse the issue rather than to increase the freedom of choice."
33. ibid.

elected, may continue to represent a constituency when he is no longer in agreement with those who elected him,or rather with the party organization which assumes to speak for the majority of the electorate."[34] What is this force which compels continued representation? Public opinion. To incur the mistrust or disfavor of public opinion is to court defeat and curry disaster. "No member can retain his seat and continuously neglect all his duties to his constituency, and at the same time preserve his own self-respect or the good opinion of the political and social world in which he moves."[35]

Any British subject who is qualified to be a voter may stand for election to Parliament in any constituency. Women are not barred. Residency in the constituency which one seeks to represent is required neither by law nor by usage. Thus, the field of selection of dandidates is enlarged and high standards of quality and calibre are maintained. "A defeated candidate.....may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard, as in America, by the legislature itself; they are tried by the Courts (K.B.D.) which certify to the Speaker of the House of Commons its report confirming or unseating the member-elect. If the matter in dispute relates to the

34. The Unreformed House of Commons, Edward and Annie Porritt, Vol. II, p.255.
35. ibid.

legal qualifications of the elected candidate and not to the manner of his election, it is investigated by the House itself and is not referred to the judges of the High Court for a recommendation."[36]

In the House of Commons, forty members constitute a quorum.[37] A majority vote suffices to pass any measure, even one deemed to be a constitutional amendment; the practice of invoking the requirement of a two-thirds vote in certain cases, as is the practice in America, has never been adopted. "The completeness with which the majority principle has been for centuries accepted is no greater than the obscurity of the origin of this basis of modern representative government, adopted, along with constitutionalism itself, in Europe and America, as the foundation of all parliamentary systems. In our own time when the importance of protection for minorities is being increasingly recognized, it is a matter of special interest to obtain clear ideas as to the nature of the majority principle..... The English conception was founded on the Teutonic theory that the formation of a corporate will must always be unanimous because the minority gives way and conforms its will to that of the majority--i.e.--all the decisions of the corporate body are unanimous by reason of the minority giving way to the majority. No doubt from the very first, the necessity of the

36. Governments of Europe, Munro, pp. 149, 160.
37. ibid, p.167

acceptance of the principle of deciding by majorities was felt instinctively; it was not till a long development had taken place, and the nation had become politically differentiated.....that it came to be recognized that even the majority principle depends upon certain conditions, and that in their absence its serious deficiencies come to light. Even in our own day we can find in the English parliamentary system traces of the old conception that decisions of a majority become, by the submission of the minority, unanimous declarations of the will of the House. Sir George Cornwall Lewis.....has aptly pointed out the analogy between a decision by the majority of a political body and a battle between the armies of two independent nations: the one is an appeal to physical force, the other is an appeal to moral force. There must always ultimately be an element of domination in a corporate decision which places a legal compulsion upon the minority. It is this very ingredient of domination in the decisions and acts of volition of individuals, just as much as of aggregates of persons, which converts them into specifically political acts. But one of the chief aims of modern statesmanship is the framing of such constitutional arrangements as will convert the necessary domination as much as possible into an indirect act of the dominated, thus molding theform of government of the nation to a shape in which it may truly be called self-

government."[38]

Before the House meets at all, its Speaker is selected by the Prime Minister after consulting with the cabinet and with the leader of the Opposition. As a matter of form, his nomination is made and seconded by two private members, in order to perpetuate the fiction that he is the choice of the whole House and not that of the ministers. The speaker who has served in the preceding parliament is always re-elected, even though the ministry has changed; he is never opposed for reelection. Because the Speaker, upon election to that post, becomes non-partisan--a neutral in politics--he never speaks in debate. "Even when called upon to give the casting vote in case of a tie....he breaks the tie by voting in obedience to certain well-established principles.... If his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the speaker always votes 'Aye.' If a tie comes on a proposal to adjourn the debate, he always votes 'No.'"[39] Although his rulings on points of order are final, he may submit a question to the House and be guided by its opinion. The House, on the other hand, may circumvent the speaker's ruling by suspending its own rules. "Rules can be suspended, amended or repealed, at any time, by a majority vote."[40]

38. Procedure in the House of Commons, Redlich, Vol. II, pp. 261, 262, 264.
39. Governments of Europ, Munro, pp. 167-172.
40. ibid.

In arranging its work the House of Commons always makes the will of the majority the basis of treatment. "At the present day this fundamental parliamentary right survives unchallenged. The House, in theory at all events, is entitled to arrange its own work. No other rule indeed is possible: a parliament which accepts as binding a programme of work imposed by some external authority, a parliament without the legal right at any moment to deliberate upon whatever subject it desires at that moment to consider, has ceased to deserve its name and has sunk to the level of an administrative board."[41]

At the commencement of each daily sitting, a period not exceeding an hour is allotted for questions, by any member, which may be asked of a minister within whose field of administration the matter belongs.[42] A member may not ask more than four questions at any single sitting. Except in unusual circumstances, notice of intent to ask questions must be duly given and the questions then appear on the printed program of business, known as the "Orders of the Day," a copy of which each member receives at the beginning of the sitting. Questions must be requests for information and must not contain and "argument, inference, imputation, epithet or ironical expression." If the question deals with matters of diplomatic or domestic policy which ought to be

41. Procedure of the House of Commons, Redlich, Vol. III, pp. 5, 198.
42. If the minister is a member of the House of Lords, questions are addressed to his representative in the House of Commons.

kept confidential, the minister may refuse to answer. Supplementary questions may be put, but no debate or discussion may follow such replies. To precipitate a discussion on a reply, at the close of the question period, any forty members may rise in support of a motion to adjourn. If the speaker accepts this motion, a debate is set for the same evening.[43]

The rules of the House are devised to guard against hasty and ill-considered lawmaking as well as to expedite business. No time limit on debate has been fixed by the rules. Yet, although it is unusual for any member to speak for more than one hour, various devices are employed to limit debate.[44] Some of the outstanding methods of limiting and curtailing debate are: (1) closure--this is the same as moving the previous question, (2) closure by compartments--this is an application of the previous question to whole groups of clauses in a proposed measure, (3) kangaroo closure--the speaker selects amendments for discussion out of those which appear on the order paper and passes over the rest without discussion, and (4) time table--this assigns specified hours to the discussion of individual clauses.

The centuries-old principle of parliamentary law that the deliberations of the Commons are private is still accepted as binding. Theoretically, therefore, there is no

43. Governments of Europe, Munro, p.172-173
44. ibid, p.199

distinction between secret and public settings and nobody has a right to insist upon the publicity of the debates; all sittings are de jure secret. "Either the speaker or any single member has a right to propose the exclusion of all strangers who may be in the House. Practice, however, has long made the principle inoperative. It has never been formally repudiated, but since 1875 the mere fact that a member informs the Speaker that he 'espies strangers' has not been sufficient, as it had been till then, to cause their immediate expulsion and so bring about a sitting which is secret de facto. The present regulation is that upon request of a member for the removal of strangers, a division is to be taken at once, without debate, and the result of the division is to determine what is to be done. In point of fact, nobody now dreams of avoiding publicity; on the contrary, all the members are only too anxious that their speeches and actions should be made known as widely as possible."[45] The union of the Speaker's and the Strangers' galleries provides room for about 160 visitors. The most regular and important visitors are the newspaper reporters who keep the outside world informed as to what transpires in the House of Commons. "These private reporters alone record what is said and done in the House. There is not, and never has been, an official shorthand department to take down the speeches and debates, nor is there, strictly speak-

45. The Procedure of the House of Commons, Redlich, Vol. II, p.28.

ing, any official printed report of what is said, though the House, acting by the Government, has long assisted the editors of Hansard's Debates by considerable subventions from public money, and has thus, in fact, rendered the continuation of this publication possible."[46]

A consideration of procedure in the English Parliament, as in the American Congress, necessarily involves a discussion of political parties. The division of the Commons into two great parties manifests itself in the outward appearance of the House and in the arrangement of places. Party influence makes itself practically felt in the disposal of the actual business of the House. "On all the more important matters which have been brought forward by the Government as the executive organ of the majority, it has become customary for the party leaders to arrive at some kind of understanding which forms a basis for joint action, "as to speed or whether the measure is a party matter and to be discussed on "party lines" or not.[47] It is one of the incidents of parliamentary business for an official

46. ibid, pp.29-30. On January 12,1895, the United States Congress provided (28 Stat.603,c.23,section 13) that "The Joint Committee on Printing shall have control of the arrangement and style of the Congressional Record, and while providing that it shall be substantially a verbatim report of proceedings, shall take all needed action for the reduction of unnecessary bulk, and shall provide for the publication of an index of the Congressional Record semimonthly during the sessions of Congress and at the close thereof." This provision remains in force today.
47. Procedure of House of Commons, Redlich, Vol. II, p.105

declaration to be made by the leader of the Opposition as to the attitude of his party towards the great legislative proposals before the House."[48]

Because of the importance of a constant attendance of members in numbers proportioned to the strength of the parties, an elaborate system of party organization in the House has been developed. Its two main features are the "Whips" and "Pairing".

"The Whips are permanent honorary party officers chosen from the members of the party itself; they hold in their hands the entire external and internal organization and management of the party as a political parliamentary unit."[49] The Whips have the important duty of control of the arrangement of "pairing," i.e., arranging for the absence of a member from one party by a simultaneous absence of another member from the opposite party, thus maintaining the relative strength of the parties, as far as possible. "Pairing in the House of Commons has become a minutely regulated institution, and it is recognized as a serious failure in political duty to go away, even for urgent private affairs, without finding a pair. A breach of promise, implied by a pair, to remain away from the House, would be so flagrant an act of personal and political impropriety that it need not practically be taken into account."[50]

48. ibid.
49. ibid, pp. 106-107.
50. ibid, p.110.

The committees in the House are chosen by a Committee of Selection which contains eleven members named by the House at the beginning of each session. The fact is that membership in the Committee of Selection is arranged in advance by a conference between the prime minister and the opposition leader. Although strict attention is not paid to party lines, party membership in the different committees roughly resembles the proportionate party strength in the House as a whole. Proposed measures proceed automatically to one of the regular committees, unless, of course, the House votes otherwise. Unlike the committees in the American House of Representatives, every committee in the House of Commons must return all the bills assigned to it for consideration.[51] The various types of committees in the House are:--

1) Standing committees on public bills; they are six in number and have from 40 to 60 members each; they are appointed at the opening of a session and remain unchanged until parliament is prorogued.

2) Select committees on public bills consider individual measures or questions which involve some new principle or some subject which has not yet come before the House in the form of a bill.

3) Sessional committees are appointed for a single session to deal with particular matters, such as examination

51. Governments of Europe, Munro, p.180

of petitions.

4) Committees on Private Bills hold hearing and report to the House which invariably accepts their recommendations. "Party politics have no place in the consideration of private bills."[52]

5) Committee of the Whole House. The Speaker appoints a chairman to preside and then leaves the chair. The entire House sits as a committee and an informal consideration takes place. Upon a motion to "rise and report" the Speaker resumes the chair and the chairman reports the recommendations of the Committee of the Whole House which the House adopts.

6) The Cabinet, though not officially so ranked, is the greatest committee of them all. It is the steering committee.

The Crown. "Common law governs all that relates to the prerogative of the Crown; its right to summon Parliament and to summon it in the form of a proclamation, to open, prorogue and dissolve it and to do it so either in person or by commission."[53] "It is an integral part of the national legislature as well. Or, as the official desighation goes, it is one of the 'estates of the realm.' Its assent is required in the making of laws.....The authority of the Crown in England is a delegated authority--delegated by

52. ibid, p.176.
53. Law and Custom of the Constitution, Anson, p.78.

parliament to a body of agents known as ministers, whose decisions are announced in the name of the Crown."[54] Orders-in-council are issued by the Crown, but they have no effect unless authorized by some act of parliament.

When measures have been passed by parliament, royal assent is given by certain commissioners, members of the House of Lords, who "declare and notify his royal assent" for the King. Royal assent is not given by merely signing the measure. The Clerk of the Crown reads out the titles of bills which have been passed, whereupon the Clerk of the Parliaments solemnly pronounces a phrase in the old French of Plantagenet days, while the lords commissioners look on in silence. Professor Munro describes the procedure[55] as follows: "Ordinary bills are assented to with the words "Le Roy le veult." Appropriation bills receive the benediction "Le Roy remercie ses bons sujets, accepte leur bénévolence, et ainsi le veult." Private bills are assented to with the declaration "Soit fait comme il est désiré." In the old days when the king decided to withhold his assent from a bill, he merely promised (like a modern politician) that "Le Roy s'avisera." This has not been done for more than two hundred years.

54. Governments of Europe, Munro, pp. 44-45.
55. ibid, p.47.

B. The Work of Parliament

When a new parliament meets for the first time, the members of the House of Commons must begin by electing a speaker. Since, by ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done, they follow the Gentleman Usher of the Black Rod to the bar of the House of Lords where they stand in silence while the lord chancellor announces "His Majesty's pleasure that you proceed to the choice of some discreet and learned person to be your speaker." They return to the House of Commons where the clerk acts as temporary mentor and they proceed to elect a speaker. The speaker and then the members, in groups of five,[56] take the oath of allegiance. They then go to the House of Lords where the king, or someone in his behalf, delivers an address (prepared by the prime minister in consultation with his cabinet) commenting on the general state of the realm, forshadowing some important government measures and inviting the House to grant the necessary appropriation measures. When the Commoners return to the House, the Speech is reread by the Speaker. The House, to demonstrate it can do business on its own responsibility advances a dummy bill, "A Bill for the Better Preventing of Clandestine Outlawries," through its first

56. Governments of Europe, Munro, p.166

stage.[57] The House then proceeds to debate an "address in reply" which is merely an expression of loyalty to the crown and of satisfaction with the recommendations made. A general bombardment by the Opposition ensues.

Government Bills. Public bills which are introduced into Parliament by a member of the ministry are known as government bills. Before being introduced, however, the minister first makes a rough outline of the bill, stating only the main principles, which he lays before the cabinet for discussion. If the principles are agreed to, he gives this outline to an expert draftsman for elaboration into a finished measure. When this is completed, the cabinet looks over the bill, and if acceptable, it is ready to be introduced.

"The first introduction of every bill is preceded by a notice, printed in the Orders of the Day. When the time comes, the bill is handed to the clerk of the House who reads its title aloud. The House, without debate or discussion, accepts this "first reading" and orders the bill to be printed. The measure must then wait its turn. If the government bill is one of great importance, the minister in charge may "ask leave to introduce it" at this first reading in which case he makes an extended speech, and a general debate may ensue."[58]

When, in due course, the bill is again reached and its sponsor moves that it be "read a second time," there is a de-

57. It is never advanced to a second reading.
58. Governments of Europe, Munro, p. 185.

bate on the principles of the bill which is usually followed by a vote determining whether the House approves or disapproves the principles of such bill. A vote adverse to the government at this stage of the proceedings normally expresses a lack of confidence in the ministry and ordinarily compel it to resign.

If the bill successfully passes its second reading, it enters the committee stage. Every public bill, except a money bill, goes to a standing committee--in exceptional cases the House may order it to a select committee. If the measure is a money bill, it goes to the Committee of the Whole House immediately after its second reading. When this committee debates estimates, it is said to be "in Supply"; when it is providing funds, it is "in Ways and Means." It should be added that money bills must originate in the House of Commons and may be introduced, under Rule 66, only by a minister.[59] Since a public bill is referred to the committee after its second reading, the work of the English Parliamentary committee differs quite considerably from that of an American legislative committee. Having passed its second reading, the principles of the bill have been approved by the House of Commons and the committee now must consider the bill as to content. In other words, the committee does not have the power to kill the bill or change

59. Standing Orders of House of Commons, Rule 66: "The House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or change upon public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the Crown."

its principles--it merely determines the content of the bill to give effect to those underlying principles already approved by the Commons.

Sooner or later, all bills must be reported back from the committees to the House. When a bill is reported back, it enters the report stage, being laid before the House in amended and reprinted form. Amendments are debated during this stage and alternative amendments may be offered. Questions, debated at the second reading, may be debated over again.

"At the close of this debate, the measure is ready for its third reading. No amendments are now in order. The slightest change of substance or phraseology requires the bill be sent back to the committee. The House must now accept or reject the bill as it stands.

"Having passed the third reading, the bill goes to the House of Lords, where the procedure is substantially the same as in the House of Commons, for concurrence."[60]

If the Lords concur, the measure is ready for the Crown's assent.[61] If the House of Lords does not concur, the measure may nevertheless be enacted into law if the provisions of the Parliament Act (described supra) are followed.

Private Member's Bills. British parliamentary procedure is predicated upon the theory that the initiative, as respects all public measures, should belong to the cabinet and that

60. cf Note 58.
61. See discussion supra under "The Crown."

government measures ought to have the right of way. Consequently, although private members may introduce public bills, they have little chance of passage or even of prolonged discussion. "Yet, since private members sponsor a great many public bills, and as there is no chance of considering them all, the rules of the House provide that a selection from the entire grist shall be made by lot. At an appointed hour, therefore, those private members who desire to introduce public bills are requested to put their cards in a box at the clerk's table, and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to introduce his bill on the first Friday of the session; the second member gets the second Friday, and so on till the Fridays of the session are exhausted--twelve or fifteen of them in all."[62] The bills so chosen go on the respective Orders of the Day and follow the same procedure as other public bills.

Private Bills. "A private bill....is one which relates to the interest of some one locality, or corporation, municipality or other particular person or body of persons."[63] A private bill takes the form of a petition with the bill annexed. First it must go before two parliamentary officials (one from each House) known as the Examiners of Petitions for Private Bills, who examine to see whether there has been a full compliance with the requirements, i.e., that the petition was preceded by certain published notices, as provided, in

62. Governments of Europe, Munro, pp. 187-188 63.Ibid,p.184

order to inform such interests as may be affected by the bill, and, that copies were sent to such governmental departments as may be concerned. "If the Examiners so certify, the bill may then be presented to either House, where it is customarily referred to a committee on unopposed bills. If there is opposition, the bill goes to one of the private committees which conducts hearings and reports back to the House, favorably or unfavorably, with or without amendments. Such committee's report on the bill is almost invariably accepted."[64]

Since both the Lords and the Commons are prorogued together, and since prorogation terminates all pending business, any "measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again to become a law."[65]

Provisional Orders. "The quest for private or special acts has been considerably slackened by the use of "orders" issued by a central department and becoming effective either automatically or when confirmed by parliament in which case they are known as "provisional orders." The usual practice is to lump several provisional orders into a confirmation bill and enact them into law."[66]

Control of the Purse. Parliament is something more than a machine to make laws, or a debating society; it controls the purse and it may redress grievances. Since the cabinet is the real power active in Parliament, it controls

64. ibid, p. 188; 65. ibid, p.181; 66. ibid, p. 192.

the purse. Of course, the members of the House of Commons have an opportunity to deliberate on some items of the budget, but by no means on the majority of such items. The items which they discuss are thoughtfully and duly considered. But then the end of the session approaches, and the budget must be passed. "In one crowded hour of glorious life, on a hot August night, the estimates of all the departments which have not previously been passed, are put specifically one after another from the chair, and the Committee and the House are asked to approve or disapprove without a word of discussion."[67] Thus, it may truly be said that the Cabinet, through Parliament, controls the purse.

Redress of Grievances. Through the elected representatives of the people, they control the machine, called the Executive, which governs them. Any or every one of its acts may be challenged, approved or condemned; if condemned by the Commons, it has to be changed. [68] "Every grievance of every citizen, however humble, in which the central government may be directly or indirectly concerned, may be brought for redress before the House of Commons to be justified or remedied by the responsible Minister in that Assembly."[69] Attention to grievances may be called, in the Question Period, through questions and supplementary questions. Further, "any member of parliament may have printed on the

67. How England is Governed, C.F.G.Masterman, p.235.
68. ibid, p.214
69. ibid, p.215

order paper a notice that he proposes to call attention to some matter of grievance or criticism, and to move a resolution. The resolution will be in practice a vote of censure. He may even, as some members have done, put down a motion attacking a ruling of the Speaker himself, or the Chairman of Committees, when he thinks either of these have given unfair decisions. Unfortunately for the private member.....the Government has control over the time of the House.....If, however, the leader of the Opposition in the past, or one of the leaders of the Opposition in the future, asks for a day to propose a formal vote of censure on the Government, or on some important policy it has adopted, that authoritative challenge to its continued support by a majority of the House is invariably accepted, and a debate takes place full of passion and bitterness."[70]

Another opportunity for expressing grievances comes in the discussion of appropriations for the several departments of the Government. Members of the House have an opportunity to attack suspected delinquencies in a department either through the committee or when the committee reports to the House. "The common form is to propose that the salary of the Minister responsible be reduced by, say, 50 pounds..... If the motion is carried, the unfortunate minister does not lose 50 pounds of his salary. He loses all his salary and

70. ibid, p.225.

his colleagues also. For, unless they attempt to reverse what they may interpret as a snap vote, unrepresentative of the real opinion of the House, they must resign. And in any case a succession of such snap votes would ensure their resignation."[71]

71. ibid, p.226.

## SUMMARY.

Before summarizing and interpreting the differences that have been evolved in procedures developed in Great Britain and United States of America for defining, determining, expressing and executing sovereign will, these further observations are to be made:--

1) Both nations have been confronted with similar problems;

2) Each has sought to achieve the same end as the other;

3) In each the same fundamental assumptions have been made as guides to political reasoning.

### Similarity of Assumptions which underly the forms of Procedures.

1) Sovereignty rests in the whole nation.

2) A determination of the sovereign will can be had only by means of a procedure in which alternatives are presented for adoption or rejection.

3) For the purpose of choosing between alternatives presented, the whole people will adopt as their will the decision reached by a majority.

4) The unanimity of will derived from the adoption of the majority principle is to be extended to that of unanimity of action and on this basis the nation will proceed

to test the soundness of its decisions.

5) The representatives, as a body, constitute a court of first instance for matters of public policy in which the same procedure, essentially, is adhered to as in the law courts.

6) The members of the electorate, as a court of appeal from the representative body, are the final arbiters in matters of public policy.

In each nation the same principle is applied for determining qualifications of voters. The electorate is composed of that portion of the citizenry which is deemed to possess such qualifications as to assure the exercise of mature and sane discretion in practical matters based on experience, and to voice the will of the people.

Political parties have the function of translating Public Opinion, as determined by the vote of the electorate in the choice of issues presented, into governmental action. Thus, in both England and America, when the dominant party has a clear majority, it controls the House and may carry through its platform, even though a majority in the House of Representatives has not as much authority as the majority in the House of Commons.

Although there is no unanimity of opinion as to the exact role of a representative, i.e., whether he is meant to be a free agent or a mere servant obeying the "mandate

imperatif," the appearance of such phenomena as instructions, pledges, censure and recall are indeed significant.

Both governments provide for the redress of grievances. In America, the Bill of Rights provides for such redress through petition; private bills are also used for this purpose. The English do this by means of questions in the Question Period, by resolution for a vote of censure, and by private bills.

The referendum, which is well-known in the United States, is not used in England. Thus, the American electorate may enact or prevent legislation in spite of the will of Congress. This power the English electorate does not possess. Yet, it should be remembered in this connection that when the American Congress is elected it remains in office for its full term without regard as to whether the largest party can or cannot carry out its program. When an English parliament is elected, on the other hand, it may be dissolved at any time after it is convened if the largest party in office cannot maintain the confidence of the House, i.e., carry out its program.

The English Parliament has a greater responsibility, and therefore, more power, than the American Congress. The latter is only one of three coordinated branches of government, the executive and judiciary being separate and independent. Parliament contains within its organization the

judiciary and the executive and thus must not only determine and express sovereign will, but must also execute it.

Examining the structure of the legislative bodies in both countries, we note that they are bicameral. The members in the lower House of each country are elected directly by the people; the basis of representation is population. The Speaker in the House of Representatives is a party man and exercises his partisanship in the conduct of the House's business while the Speaker in the House of Commons is nonpartisan and remains neutral during his incumbency in that office.

The prime minister, a party leader, is chosen, in reality, by the party caucus. The position in the House of Representatives which most nearly resembles this office is that of the majority floor leader. Both Houses have similar committee systems. The committee members are all chosen along partisan lines outside of the Houses by party members; the composition of each committee is then approved by the party caucuses, also outside the Houses, and are then submitted to the Houses for formal ratification. The theory followed throughout is that the dominant political party, through its majority, is responsible for fulfillment of its program. The committees in the House of Representatives are more important than those in the House of Commons. So important, in fact, are these House committees that they have

been dubbed "little legislatures." Before any bill is discussed in the House of Representatives, it goes to some committee which has the power, virtually, of life or death over such bill. In the House of Commons, on the other hand, a bill goes to a committee only after it has passed its second reading, i.e., after the principles of the bill have been approved by the House; it is then the committee's function to make adequate, legal expression of the principles approved and report the bill back to the Commons. A committee in the House of Representatives, on the other hand, may "pigeon-hole" a bill and it will thus never come to a consideration by the whole House.

Representation in the United States Senate is on a basis of states (i.e., each state has two Senators regardless of population) and the parties function through the committee system in much the same way as they do in the House of Representatives. Since membership in the House of Lords depends on social, financial or educational status, and since membership in this body is for life, political parties play a relatively insignificant role in its activities. The Lords have no standing committees. The Vice-President's position in the Senate, like the lord chancellor's position in the House of Lords, is more like that of a moderator than a presiding officer. In both these bodies there are comparatively few rules of procedure and debate is practically un-

limited because political parties have less influence here than in the lower Houses.

To be enacted into law, bills must go through approximately the same procedure in Congress as they do in Parliament. In the lower Houses they must pass three readings, be considered in committee, debated in the House and sent on to the second chambers where they must survive a similar procedure; finally, they must be approved by the executive. There are, however, some important differences in the procedure. As has been shown, American committees have more power than English committees. Further, the American Congress makes no distinction, as do the English between public, private and money bills. A presidential veto can kill a bill unless two-thirds of the House and Senate respectively override the veto. The withholding of assent by the Crown in unimaginable. Let us now turn our attention to certain dissimilarities of major importance which have developed.

<u>Dissimilarities that have developed in the application of the underlying assumptions and procedures</u>.

1) In the House of Commons, the English court of first instance for matters of public policy, every question of public policy is heard by the court as a whole; opportunity is given to all interested parties, through their representatives, who are members of the House, to present evidence for or against the proposal; each side is permitted to

address the House as a whole (i.e., the entire court) and present the merits of its case in the best light; the House as a whole hears and considers the evidence and deliberates the merits and defects of the proposition; the entire House, presided over by an impartial moderator, then determines, on the basis of the majority principle, whether to act favorably or unfavorably on the proposed plan; then--and then only--after approval by the entire court of the plan, it is sent to a committee for detailed study and further elaboration after which the committee must report back to the entire court for its final determination.

In the House of Representatives, the nominal American court of first instance for matters of public policy, every question of public policy is immediately referred to a partisan committee for its consideration. Pressure of business is the reason given for such routine practice. If the particular committee regards the proposal unfavorably, for any reason whatsoever, it kills the plan and the "American court of first instance" never even hears about it--let alone consider it. This is the fate of the far greater majority of measures introduced in the American Congress. The only measures which ever reach the House of Representatives for its attention are those which are referred to it by the several "little legislatures" at the direction of external influences.

Thus, we find that although the formal procedures in England and America are essentially alike, the English have applied the spirit to the letter of the law while the Americans have done everything but that. The divorce, by the Americans, of the spirit from the letter of the law has resulted in the creation of two classes of petitioners--that privileged class which can get its case heard before the court of first instance and that large, ordinary, usual class which has to be content with a determination of its grievances by a partial agency of such court.

2) Another practical dissimilarity arises in the matter of appeal and review. When the English lower house sits as a court of first instance, the particular situation is so dramatized that the proponents of a measure, in the event of unfavorable action taken upon the bill, or its opponents, in case of such favorable action, may have a direct and immediate appeal to the people squarely on the issue, through a dissolution of the House. In America, such machinery does not exist. Even when a measure does receive a hearing by the American House of Representatives, the parties dissatisfied with its decision can do nothing else than wait for the expiration of the term of the legislature before they can appeal to the people. By that time there is such an accumulation of issues to be decided by the single vote of the electorate that, discarding all external influences,

a satisfactory solution to any one problem is a practical impossibility.

It has been suggested that the election of a President of the United States entails a definition of issues and an expression of sovereign will on such issues. Is this the case? It seems clear that the party platform on which a presidential candidate is elected usually contains so many issues, when indeed it is not so obscure and vague as to defy intelligent interpretation altogether, that it seems hardly fair to assert that the candidate's election represents an expression of approval of sovereign will on all issues mentioned in the platform. And is it not as logical to assume that a particular candidate was chosen because his platform was less distasteful to the electorate than his opponent's? If there did, in fact, occur such a negative expression of sovereign will, what affirmative action is the new President to take? Further, when a President is reelected, such reelection is in the nature of a referendum whereby the electorate voices sovereign approval of acts already performed--but there is no true expression as to what constitutes the sovereign will on acts to be performed. President Franklin D. Roosevelt was reelected. Was there any expression of sovereign will on the question of increasing the United States Supreme Court personnel? By his reelection, did the sovereign will express satisfaction

at the President's failure to do anything when the New Deal was invalidated? One guess may be more reasonable than another--but it is only a guess. If the election of a United States President is an expression of sovereign will, the nature of the expression is such that it requires particular analysis and definition before it can be accurately ascertained. Perhaps the President himself ought to interpret what was meant by the contents of the party platforms.

In the matter of executive determination and expression of sovereign will, it is well to indicate a point of analogy between a Presidential Proclamation and an Order-in-Council as issued by the Crown.

Finally, it should be noted, that in America the national legislature has formally provided for publicity and permanent record of its proceedings through the Congressional Record. The English Parliament has never made such formal provision, though the government has subverted some funds, from time to time, to assist in the maintenance of Hansard's Debates.

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